# United States Court of Appeals for the Second Circuit



# APPELLANT'S APPENDIX

# 75-1173

## ORIGINAL

BPAS

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

DOCKET NO. 75-1173

UNITED STATES OF AMERICA

-against-

FRANK LICURSI, JR.,

Defendant-Appellant

On Appeal from the United States District Court for the Eastern District of New York

APPELLANT'S APPENDIX



RAYMOND J. MESSINA
Attorney for Appellant
Frank Licursi, Jr.
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New York, New York 100
212-HA5-7525

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	offenses against deft Lucursi pursuant to Rule 14(ret	. Jan	. 21	, 197	5)
10 75	Before COSTANTINO J - case called & motion withdrawn.	•		ric. 13	114
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23-75	Particulars Before COSTANTINO J - case called & motion argued and	deni	ed		19
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23-75	Notice of Motion filed for Inspection, Bill of Particu			4.1.175	
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24-75	Before COSTANTINO J - case called - deft LICURSI & cou	nse1	Ray	ond	
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7	of \$500 pursuant to 18:4209 and is to pay the fine with	RST	m "	56150	
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DATE		(g) 188
-18-75	Judgment & Commitment and Order of Probation filed for der	
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4-18-75	Notice of Appeal filed without fee (LICURSI)	
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1 1	to the Court of Appeals (LICURSI)	100
4/21/75	Financial affidavit filed(LICURSI)	Z IZM
-23-75	Letter of Jan. 13, 1975 from counsel for deft Licursi wit	hdren
4	motion under fule 7(f)	. 6
4-23-75	Deft Licursi's request to charge filed, (Ex.#1) and Ex.2	E0 3
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RJD:JO:sj F# 743,567

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- against -

DANA F. DYNES, EUGENE CAUFIELD, DAVID CORR and FRANK LICURSI, JR.

Defendants.

Cr. No. 74 ( 743 (T. 21, U.S.C., \$841(1)(1) and T. 18, U.S.C., \$2)

Nov 27, 1974

THE GRAND JURY CHARGES:

On or about the 5th day of May 1974, within the Eastern District of New York, the defendant EUGENE CAUFIELD, knowingly and intentionally aided and abetted by the defendants DAVID CORR, DANA F. DYNES and FRANK LICURSI, JR., did knowingly and intentionally distribute approximately eighty-nine (89) grams of cocaine hydrochlocide, a Schedule II hazcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.)

A TRUE BILL.

FOREMAN.

UNITED STATES ATTORNEY

MR. SCOTTI: Your Honor, Mr. Messina,
Mr. Foreman and ladies and gentlemen of the
jury:

As you know by now, my name is Gavin

Scotti. I am an assistant United States Attorney
who has been given the responsibility of presenting this case to you on behalf of the United States

Government.

It now becomes my duty to make what is commonly known as an opening statement.

Some of you may have served on juries
before and you will know that the purpose of
the opening statement is to apprise you of the
charge against the defendant and an outline of
the Government's evidence that will be produced
during the trial in support of the charge.

This is a simple case as Judge Costantino told you. It involves the sale of narcotics.

The specific narcotic in this case will be cocaine.

The evidence you will hear and the charge against this defendant will revolve around one aspect of this cocaine transaction. Let me explain what I mean.

This defendant, Frank Licursi, is being charged with aiding and abetting the distribution or sale of cocaine on or about May 6, 1974.

Now, what does that mean? The evidence will show that this defendant was instrumental in introducing the person who sold the cocaine, whose name you will hear, is Eugene Caufield, to the person who bought cocaine and this is in violation of federal law.

The evidence will also show that the person who bought the cocaine, unbeknownst to the defendant, was an undercover agent of the Drug Enforcement Administration and he is sitting at counsel table with me, Joseph Brzostowski.

The evidence will show that on May 5, the day before the Government alleges the transaction took place, Agent Brzostowski was introduced to an individual by the name of Caufield by this defendant, Frank Licursi.

We will show that Frank Licursi knowingly, intentionally and willfully made this introduction for the sole purpose of having Mr. Caufield sell cocaine unlawfully to the person he knew as "Joe."

As I said, that is in violation of United

States Law which the Judge will give you at the end of the case.

The evidence will also show that this defendant, Frank Licursi, was not actually present when the cocaine was delivered and the money paid for it.

I want you to be very clear on this

point. We are not charging this defendant with

actually making the transfer or delivery or

sale of cocaine. He is simply being charged

with helping, with aiding and abetting the person

who did sell the cocaine and as I said, the way

he helped, the way he aided and abetted was to

make the introduction, introduce the buyer to

the seller and that his introduction made this

illegal transaction possible.

I want you to be clear on that so there is no confusion when you hear the testimony and the testimony shows that this defendant was not present on the actual date of the transferral of the narcotics which was May 6, the day after he made the introduction.

Agent Brzostowski will testify for you.

He will tell you how he paid the defendant and

what happened.

The other witness we will present
to you is a chemist and he will testify that
he performed a laboratory analysis on the
substance sold for twenty-two hundred dollars
and he will testify to the amount which the
evidence will show will be two ounces of cocaine.

That is the essence of the Government's case. As I say, it is a simple, straight-forward case.

The key issue for you to remember, the key thing you have to decide is, did this defendant, Frank Licursi knowingly and willfully make this introduction of this individual named Caufield to Agent Brzostowski knowing that a cocaine transaction was to take place and I am confident after you hear the evidence that you will be more than justified in returning a verdict of guilty in this case.

Thank you.

THE COURT: You may proceed, Mr. Messina.

(continued on next page)

MR. MESSINA: Ladies and gentlemen of the jury:

My name is Ray Messina. I am the attorney for Frank Licursi.

My client is being charged with aiding and abetting a sale which took place on the 6th of May, 1974.

As the United States Attorney stated
the Government claims that my client introduced
the agent, Mr. Brzostowski, to a chap named
Caufield.

Due to that introduction, a simple introduction, they are going to attempt to prove that that simple introduction somehow led, on the next day, to a buy and a sell where my client was not present, where my client did not know any of the particulars.

They want to link an introduction to a sale of cocaine which happened the next day where my client was not even aware of the meeting, was not even aware of the amount or any of the particulars at all.

The Government starts off -- leaves out
a little piece of the puzzle and the piece of

the puzzle is, how does Agent Brzostowski meet my client?

Well, it is sort of glossed over but
the evidence will prove that it was done through
an informer, a man who was under indictment
for a drug related case, conspiracy to sell
narcotics.

You will see that the Government used this informer to contact my client who has no previous record. He has had absolutely no contact with narcotics, ever.

They use this tool -- that's what an informer is -- to try to line up people and this informer, who was a friend of my client's girlfriend -- as a matter of fact, he was an insurance agent -- he calls up my client on a lark.

My client is not a drug trafficer,
has no previous conviction for drugs -MR. SCOTTI: I have to object to

this kind of comment.

THE COURT: Yes.

MR. MESSINA: All right, your Honor.

I will limit myself.

In any event, it is up to the Government as I think the Judge mentioned to prove their case. They have the burden of proving my client guil'y. We need not do anything.

My client need not take the stand. My client need not testify. However, he is going to testify.

he wants you to know the whole story and we will attempt to prove that if my client is guilty of anything, whatever he may be guilty of, it is not of this crime because he is accused of aiding and abetting a crime that took place on the 6th when he wasn't present and didn't know ofit.

So, if he is guilty of anything he was entrapped into doing it and we will attempt to prove the legal defense of legal entrapment.

In other words, if the Government sets up in motion, a crime and my client has no predisposition to commit the crime --

THE COURT: That is for me.

MR. MESSINA: I won't go into it. The

Judge will explain it to you. It is a legal concept,

a legal idea.

But, I will tell you right now that
I am going to prove it and I must tell you
that or I waive my right to prove it.

As I say, the burden of proof is on the Government. My client need do nothing.

and their cross examination and using your common sense as people as you do in your every-day life where you are in contact with people every day and you have got to make up your mind every day whether someone is trying to pull the wool over your eyes or not, you use that same common sense in determining this case. You do that every day in your own goings on and after you weigh all of the evidence it is going to be up to you as to whether the Government has proved its case or not.

Thank you.

THE COURT: Call your first witness.

MR. SCOTTI: The Government calls William Seligman.

WILLIAM R. SELIGMAN, having first been duly sworn by the Clerk of the Court took the witness stand and testified as follows:

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24 25 THE WITNESS: Joseph Brzostowski,

B-r-z-o-s-t-o-w-s-k-i.

## DIRECT EXAMINATION

### BY MR. SCOTTI:

Q Mr. Brzostowski, by whom are you employed?

A United States Department of Justice, Drug Enforcement Administration.

Q In what capacity are you so employed?

A As a special agent.

Q As a special agent are you employed in any particular capacity?

A At time I operate in an undercover capacity.

Q How long have you been employed by the Drug
Enforcement Administration?

A little over four years.

Q Please explain briefly what the duties of the undercover officer are?

An undercover agent in essence is responsible for going out and to assume the identity of an individual involved in drug traffic and determine other individuals trafficing in drugs.

Q Now, were you so employed in May of 1974?

A Yes, I was.

Q And in connection with your official duties as

7 8

an undercover agent for the D.E.A., which we will call the Drug Enforcement Administration, did you have occasion to come into contact with the defendant in this case, Frank Licursi?

- A Yes sir I did.
- Q How did that come about?

A On May 3rd, 1974, a cooperating individual of our office contacted me and advised me that he made arrangements for me to meet with Frank Licursi and Jennifer Lisa and that he could supply me with quarter amounts of cocaine and that he had made arrangements for me to meet with him on May 5, 1974.

Q Is it customary for the Drug Enforcement Administration to use what you call "cooperating individuals"?

- A Yes, it is.
- Please explain what a cooperating individual is.
- A He supplies information or assistance to the Drug Enforcement Administration relating to criminal acts going on in the community.
- And in some instances are these cooperating individuals people who committed crimes themselves?
  - A Yes.
- Q And the cooperating individual you testified about this morning, had he been involved in a criminal activity?

-		Brzostowski-direct
1		47
2	A	Yes.
3	٥	What kind of activity was that?
4	A	Narcotic activity.
5	Q	Had he been indicted for that activity?
6	A	Yes.
7	Q	Was he under indictment at the time that he
8	contacted you	?
9	A	Yes, he was.
10	Q	Now, with regard to these cooperating individual:
11	is it sometim	es customary for payment to be made to these
12	individuals?	
13	A	Yes, at times there is.
14	Q	With regard to the individual you testified
15	about regardi	ng this case, was the individual paid to your
16	knowledge?	
17	A	He was not.
18	Q	Would you know if he had been paid?
19		Yes sir, I would.
21	Q	I believe you testified that the cooperating
22	individual st	ated to you that there was going to be a meeting
23	with Mr. Licu	rsi?
23	A	That is correct.
25	Q	When was that to take place?
20	A	May 5, 1974.

app 15

		Brzostowski-direct
1		48
2	Q	And did there come a time on May 5 when you
3	did meet with	Mr. Licursi?
4	A	Yes, I did.
5	Q	Where was that?
6	A	1-43 Plaza Road, Fairlawn, New Jersey.
7	Q	Was that a home or an apartment?
8	A	A single family home.
9	Q	And do you know who owned the home, whose home
10	it was?	
11	A	Absolutely I do not know, sir.
12	Q	Who was present?
13	A	I went to the residence with this cooperating
14	individual an	d at the time I met Frank Licursi and other
15	individuals s	ubsequently identified as Eugene Caufield,
16	Phyllis Caufi	eld and Jennifer Lisa.
17	Q	Do you remember the time?
18	A	Approximately seven p.m., a little before.
19	Q	Were you introduced to Mr. Licursi?
20	A	Yes, I was.
21	Q	By the way, do you recognize Mr. Licursi in
22	the courtroom	today?
23	A	Yes sir.
24	Q	Point him out, please.
25	A	The individual in the grey suit sitting at the

defense table.

MR. SCOTTI: Let the record indicate that the witness has identified the defendant, Prank Licursi.

- Q How were you introduced to Mr. Licursi?
- A I was introduced as "Joe" as the guy interested in buying the cocaine.
  - Q And did Mr. Licursi say anything?
- A We walked up the stairs after we entered and exchanged greetings.

There was a large number of people and I asked

Mr. Licursi if they were all involved because I was concerned

about the number of people.

He said "Don't worry about it. Everything's cool. Everyone knows what's going on here."

He introduced me to an individual named Gene, the guy with the cocaine connection.

- Q Mr. Licursi told you Gene was the man with the cocaine connection?
  - A Yes, he did.
  - Q What if anything happened after that?
- A We spoke generally, briefly, introducing each other to Gene and the girls.

At this point Gene asked if I was ready "to do

business" -- in his words -- and I said I was.

He said he had to make a phone call.

I questioned him about the quality of the cocaine since the

price was -- there was a substantial amount of money involved,

over four thousand dollars and he said "Don't worry about it.

The cocaine Gene gets you will be of good quality."

He got on the phone and placed a call.

I started to speak again with Frank Licursi.

When Gene made the call were you present in

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Mhat room was that? Well, describe the apartment for us.

A It was an open area, upstairs apartment. It could have been just a large room with tables and sofas in

Yes.

Q

the room?

Q And the phone was right there?

A Yes, it was in that room.

Q Now, while you were talking with Mr. Licursi could you hear what Gene was saying at the same time?

A I was trying to overhear but I was only able to get bits and pieces.

I heard him ask if everything was ready and telling the individual he was talking to that "We'll be right

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24 25 over." But, at this point, I couldn't hear much else of the telephone conversation.

Q And you said you discussed the amount that was going to be purchased with Mr. Licursi?

A Yes, I did.

Q Did there come a time when Gene got off the phone ?

A Yes.

Q What happened then?

A At this time Gene said "Everything's ready. We have to go."

I said "Where Jo we have to go? I was under the impression the cocaine would be in New Jersey."

Q Did you say that"I thought the cocaine would be in New Jersey"?

A Yes.

Q To whom?

A To Gene.

Q Was Mr. Licursi present?

A Yes, he was.

Q And then what was said?

A Gene told me "If you want the cocaine you have to come over to Brooklyn. That's the only way it can be done."

We discussed it further and I decided I would go

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2	with	him	to	Brooklyn.
		Trem	CO	brooklyn.

- Q And did you go to Brooklyn?
- A No, I did not.
- Q Did you leave the premises?
- A Yes.

Shortly after this discussion myself, the cooperating individual, Frank Licursi, Gene Caufield and the two girls, we all exited the residence.

I got into my Government vehicle. The cooperating individual got into his personal car and left the area stating he had something else to do.

- Q He departed your company?
- A Yes, he left the company.
- Q All right.

A (continuing) Frank Licursi and the two girls got into a blue Volkswagon and Caufield got on a motorcycle.

We headed down Route 4 towards New York and while on Route 4 I decided I did not want to go to Brooklyn and I blew the horn, making a motion and told them to pull over to the side of the road and we pulled in a gas station area.

- Q Were you in caravan fashion on Route 4?
- A Yes.

As I recall, I was following Frank, Gene was

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## Brzostowski-direct

1		53
2	following me.	
3	Q	Did you learn his last name?
4	A	Gene Caufield.
5	Q	Do you remander where you stopped?
6	λ	In an area between Fairlawn and the George
7	Washington Br	idge on Route 4.
8	Q	Did everyone stop when you motioned?
9	A	Yes.
10		I got out of the car. Genc came over to me and
11	Frank also ca	me over to me.
12		I told Gene I decided I didn't want to go to
13	Brooklyn with	this much money because I was not familar with
14	Brooklyn.	
15	Q	Did you discuss at this time how much money you
16	had?	
17	A	Yes. I believe I told them I had half the
18	money. I was	going to purchase a quarter of a pound in two
19	ounce parcels	•
20	Q	How much would that be?
21	A	Half a pound.
22	Q	You were going to purchase two ounces?
23	A	Yes.
24	Q	Then what happened?
25	A	I said I wanted to pick out an area near the

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George Washington Bridge which we would be familiar with.

He made a phone call, spoke with an individual named Danny and I heard the name "Dave" mentioned.

He said "The guy's not here but we can go over there."

Q Who said that?

A Gene.

I said "I know a place in Fort Lee, New Jersey and we can meet there but I have to place a phone call fast since the duration of time is longer than I originally expected."

I placed a call to the communications center and to advise my surveillance agents we were proceeding to the Plaza Diner in Fort Lee, New Jersey.

- Q Would you please explain that surveillance agents are?
- A When an agent goes out there are agents that follow him for the protection of the agent.
  - Q Did you have surveillance agents at that time?
  - A Yes.
  - Q Do you know who they were?
  - A Yes.
  - Q Mention some of them.
  - A Agent Stanley Morrissey, Special Agent James

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Bradley and Detective Robert Sheedy.

After the phone call what happened?

I got into my car, Gene got on his motorcycle and Frank and the girls got in the Volkswagon.

Were the girls part of the conversation?

They overheard or could overhear what was going on but they were not contributing to the conversation.

Mr. Licursi contribute anything to the conversation?

At this point He was more or less just overhearing what Gene and I was discussing.

The conversation was really more or less between you and Gene?

Yes.

Did you leave that area?

Yes. We drove from that area to the Plaza Diner. It's on Lemoine Avenue.

> Q Lemoine?

Lemoine.

What happened at the Plaza Diner?

I parked my car. Frank parked the Volkswagon Gene parked the motorcycle.

We were on the street and I discussed with Gene that I would like the cocaine brought to New Jersey still and

there was a phone booth there and Gene said "I think I can be back with the cocaine by nine o'clock."

I said "There's a phone booth here. If you can't come back by nine, call me at the phone booth."

Gene took the number. Frank had also gotten out of the car but again, he listened to the conversation. He didn't contribute to it.

At this point Frank got back on the motorcycle. The girls had not gotten out of the Volkswagon. They drove to the George Washington Bridge.

Q At or about nine o'clock did you receive a phone call at the telephone Looth?at the PlazaDiner?

A Yes.

Q Who was on the phone?

A At this point it was Gene Caufield and he told me there was a problem and the man with the cocaine definitely did not want to come to Jersey.

I said I didn't want to go to Brooklyn.

He said "Think it over." He gave me a number.

He said, "If you change your mind, call me back."

Q Did you call him back?

A Yes.

Q When was that?

A About five or ten minutes later.

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Q Did you talk to Gene?

A Yes.

Gene answered the phone and I said "Gene, I'm not coming over."

Gene uttered an obscenity to me and at this point he was off the phone.

Frank Licursi then came on the phone and he said "What's the problem? Why don't you want to come over?"

I told him I didn't feel safe.

He offered to meet me at a location and take me to the residence. I offered to meet him in Manhattan and at this point it became an impasse. I didn't want to go to Brooklyn and they didn't want to bring the cocaine out of Brooklyn.

I gave Licursi a phone number and said "Sperk to Gene. If he changes his mind, tell him to call me."

Q Can you put the conversation a little more in terms of what you said and what he said?

A At this point I don't remember exactly but

Gene said "What's the problem? Why don't you want to come

over? You'll be satisfied."

At this point I said "I don't want to come to an area I'm not familier with with several thousand dollars."

What if anything happened then?

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1	58
2	A At this point we ended our conversation and I
3	left Fort Lee, New Jersey.
4	About eleven thirty I did receive a phone call
5	from Gene Caufield.
6	Gene told me that he he apologized for the
7	problems that we had that evening saying "Everything's cool.
8	Everybody's paranoid. Nobody knows anybody." I said "I
9	understand."
10	He said, "Well, I think we can do it the next
11	day" and told me to call him around noon or so.
12	Q Who said "I think we can do it the next day"?
1.3	A Gene Caufield.
14	Q What time was that?
15	A Eleven thirty p.m., I think.
16	
17	Q Did you have occasion to contact Gene Caufield
18	the next day, May 6?
19	A Yes sir, I did.
20	Q Please tell us how that happened and what
21	happened?
22	A I called him about 12:30 p.m. and I asked him
23	if we could do the cocaine deal and he said Yes, everything
24	was ready but I still had to come to Brooklyn.

At this point I agreed to come to Brooklyn and Gene said "You can pick me up at my house" which was in Queens

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 and he gave me his address in Queens, 2232 36th Street, I believe, in Queens, to pick him up.

At this point, we closed the conversation and I told him I would see him later on, about 3:30.

About 3:30 that afternoon myself and Special Agent Morrissey in the car with me, went to Gene Caufield's, picked him and his wife Phyllis up and we drove to Brooklyn, New York.

- Q Was Special Agent Morrissey acting in an undercovercapacity also?
  - A Yes.
- Q Was Frank Licursi present at this time on the 6th?
  - A No, he was not.
  - Q What happened when you drove to Brooklyn?
- A Following Gene's and Phyllis' directions, we went to 3rd Street in Brooklyn, parked our vehicle in the 400 block.

special Agent Morrissey stayed in the Government car. I got out and accompanied Gene and Phyllis Caufield to a house on 3rd Street. It was a three family house or a three story, anyway.

We rang the buzzer, were buzzed into the apartment and went upstairs to the third floor apartment area.

## Brzostowski-direct

Q Who was present in the third floor apartment area?

A An individual I was introduced to as Gail and a young child.

Q Did anyone else subsequently arrive at the apartment?

A While I was there another individual came in, introduced to me as Danny.

After we were admitted to the apartment Gene told Gail "This is the guy from last night."

I was introduced to Gail. We exchanged greet-ings.

Gene told me he had to make a phone call and went and placed a phone call.

Q What happened after the phone call?

A Gene got off the phone and said "We'll have to wait for a while. The guy will be over in a little while."

So, at this point we stayed in the kitchen with Gene, Gail and Phyllis.

There was some marijuana. Someone took out some marijuana, passed it to Gail. They passed it to me. I declined saying I was doing business and didn't get involved in that and that point I went into the livingroom to sit down and wait for someone to arrive.

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Did someone arrive?

A Yes.

About a quarter to five David Corr arrived at the apartment.

David arrived at the apartment and Gene introduced Dave to me and said "This is Joe. He's the guy that wants to buy the coke."

I told Dave I hoped the coke would be a good quality since we went through a lot of delays in the last day or so and I said I wanted two ounces and he said "I thought you were getting a quarter of a pound."

I said I didn't want to spend the money until

I knew what I was getting.

Dave said he would get me a sample and I said

I wasn't interested in a sample because he could bring me a

small sample and the rest wouldn't be as good.

He said that I would like the cocaine. He said he would go get it and I said I had to go downstairs and tell my partner there would be a delay.

- Q Agent Morrissey wasn't with you in the apartment?
- A No.
- Q Did you go down and get Agent Morrissey?
- A Yes.
- Q By the way, did the defendant arrive at the

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MR. MESSINA: Objection to the word "arrive."

MR. SCOTTI: I will withdraw the word.

- Q Did you see the defendant on the 6th?
- A No.

apartment on the 6th?

- Q After Dave Corr came, did you receive cocaine?
- A Yes.
- Q Tell us how that happened?
- A When I left the apartment to get my partner, we saw David Corr leaving on a bicycle.

We, Morrissey and myself, went back to the apartment. Gene said Corr would be right back.

About a half hour to 45 minutes later Dave came back and he went into the back of the apartment, came out front, put a small amount of white powder on a silverplate.

He said "This is the sample of the coke" and again, Morrissey and myself said that didn't mean anything. We were interested in the quality of the bigger package.

We discussed this and finally they agreed they would get the two larger packages of cocaine for us.

At this time Corr told us that we couldn't go with him. That she -- he discussed the connection as she.

We were hesitant to front the money.

	Brzostowski-direct
1	63
2	Q Who do you mean by "we"?
3	A Myself and Morrissey.
4	Q What do you mean by "front the money"?
5	A You are supposed to give the individual the
6	money and they are supposed to come back with the cocaine.
8	At this point we discussed how to transact the
9	money so everyone was satisfied and Morrissey and myself said
10	we would give the money to Gene Caufield, we knew him, but
11	we wanted to follow Corr and Gene to the individual who had
12	the cocaine even though we couldn't meet that individual.
13	They got on bicycles and we followed them to
14	Garfield Place in Brooklyn and we were told to park on Garfiel
15	Place and 6th Avenue and they went back up Garfield Place to
16	7th Avenue.
17	They went to a building there. We didn't see
18	the exact building, just the general location.
19	Five minutes or so later, Corr and Gene came
20	back on their bicycles.
21	One said "We've got it" and the other said "Foll
22	us."  I believe it was Gene who said "Follow us."
23	We followed them to 6th Avenue and 2nd Street
24	in Brooklyn.
25	Gene stopped on the bicycle. We pulled up along

app 31

2	side	of	him	in	the	car	and	Gene	handed	us	the	cocaine
- 1												

- Q How much money did you give Gene?
- A Two thousand two hundred dollars.
- Q How much cocaine were you supposed to receive for that two thousand two hundred dollars?
  - A Two ounces of cocaine.
- Once you got the package from Gene Caufield what did you do?

A Looked at the contents of the tin foil, saw there was white powder in it and conducted a field test which gave a positive reaction for cocaine.

Q Then what if anything did you do with the cocaine?

A At this point Special Agent Morrissey and myself maintained the cocaine in our custody, drove back to the Newark district office, processed it, weighed, initialed, sealed it and secured it in our safe at the Newark District office.

And did there come a time when you took it from the safe in the Newark District office?

A Yes.

On May 7, 1974, I withdrew the evidence, exhibit 1 here and took it to the Newark Police Department chemist, Bill Seligman.

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Q I believe it is exhibit 2.

A Yes sir.

Q Was the cocaine in your continual custody and control until you gave it to the chemist, Mr. Seligman?

A Yes.

Q I show you Goverment exhibit 2 in evidence, subject to connection and I ask you to look at it.

I ask you to describe what Government exhibit 2 is.

The exterior is a plastic evidence envelope used at the Drug Enforcement Administration, used to place evidence into and inside are two tin foil packets with several stickers on them.

Are those the tin foil packets containing the substance which you received from David Caufield -- Eugene Caufield on May 6th, 1974 -- I'm sorry --

A Yes.

Q Is there any way you can identify those aluminum packets as being the packets you in fact received?

A Yes.

There's a sticker on each metal foil with my initials and the date we obtained the exhibit.

Q What is the date?

A May 6, 1974.

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Now Agent Brzostowski, in connection with the events that transpired on May 6th, the events which you have just testified to, were there other conversations, statements that were made by the various individuals you testified were there that you have not told us about?

In other words, did you give us a word-for-word recitation of everything that was said?

A Oh, no sir, not word-for-word.

MR. MESSINA: I object to that.

MR. SCOTTI: I will withdraw the question.

MR. MESSINA: I think --

MR. SCOTTI: I will withdraw the question.

THE COURT: Strike out the answer.

MR. SCOTTI: No further questions.

THE COURT: We will take a five minute

recess.

(Jury excused at 11:50 p.m.)

THE COURT: What did you resolve?

MR. MESSINA: I have to subpoena him,

your Honor.

THE COURT: You had better get it ready so I can sign it.

MR. MESSINA: I will have to get to the marshal in Newark.

THE COURT: We'll finish with this witness and I will give you time to do it.

MR. SCOTTI: Does Mr. Messina have any objection to the cocaine itself now that I have connected it?

MR. MESSINA: I don't follow the question.

THE COURT: Do you have any objection
to the cocaine so far as connection is concerned?

MR. MESSINA: I won't concede it.

MR. SCOTTI: No, but yesterday we had the chemist on the stand and it was taken subject to the connection of the agent's testimony.

THE COURT: I don't think at this point it is connected to this defendant.

MR. SCOTTI: Well, he didn't sell it.

That is why I am asking if he has any objection.

MR. MESSINA: Objection to what?

MR. SCOTTI: Never mind.

THE COURT: As far as I'm concerned, it is in evidence.

(Recess taken)

(After recess)

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(Jury entered jury box at 12 o'clock.)

JOSEPH BRZOSTOWSKI, having

been previously duly sworn by the Clerk of

the Court resumed the witness stand and further

testified as follows:

THE COURT: Mr. Messina?

### CROSS EXAMINATION

## BY MR. MESSINA:

Now Agent Brzostowski, you testified that your contact, your initial contact with the defendant Licursi was through what you call a cooperative -- what's the word -- cooperative individual named Joseph DiJanni; is that correct?

- A No. I don't believe I testified to that.
- Q Did you in fact make your contact with defendant Licursi through an informer or cooperating individual as you call it?
  - A Yes sir, I did.
  - Was that cooperating individual Joseph DiJanni?
  - A No sir, it was not.
  - Q Could you tell me who it was?
- A Sir, it is the policy of D.E.A. not to identify confidential sources of information.

MR. SCOTTI: May we have a side bar?

THE COURT: That's the answer to it.

I don't think we need a side bar.

However, if you want one --

MR. SCOTTI: Yes, I do.

(Side bar discussion between Court and counsel as follows:)

MR. SCOTTI: I just want to clarify

for the record -- I think it was a little bit

confusing.

The question Mr. Messina was asking, as I understand it, the agent testified that the cooperating individual was not Joseph DiJanni.

As we know from this morning's proceedings outside the presence of the jury there are two Joseph DiJannis.

THE COURT: Senior and Junior.

MR. SCOTTI: Yes, and the D.E.A. has
a policy not to identify the cooperating individual but there was a confusion here and I wanted
to put that on the record.

You asked if it was Joseph DiJanni and it is not clear.

MR. MESSINA: The answer is yes, in other words?

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MR. SCOTTI: Well, the question wasn't clear.

THE COURT: Who were you talking about?

MR. MESSINA: The son, naturally.

THECOURT: You have to make that clear.

(Conclusion of side bar discussion)

(Following held in open court.)

Q Now Agent Brzostowski, so there is no confusion, the Joseph DiJanai which I referred to is a man of approximately 25 years old. His father happens to be of the saname. The man I am referring to is the son, Joseph DiJanai.

Now, I ask you again, Agent Brzostowski, did
your initial contact regarding the defendant Licursi come
through what you previously referred to as a cooperating
individual and was that cooperating individual Joseph DiJanni,
the son?

MR. SCOTTI: May I have some clarification as to what counsel means by "initial contact"?

MR. MESSINA: His initial --

- Q Had you ever seen Mr. Licursi prior to being introduced to him by Mr. DiJanni?
- A My answer is that the policy of D.E.A. is not to identify these individuals.

### Brzostowski-cross

.		Brzostowski-cross
1		71
2		THE COURT: You must answer. It is
3	a dire	ct question.
4	A	Through Joseph DiJanni, no.
5	Q	Well, who was the individual who initially
6	introduced yo	u to Mr. Licursi?
7		THE COURT: That he need not answer.
8	Q	Now, did there come a time do you know a
9	Mr. DiJanni?	Joseph DiJanni?
10	A	I do not know a Mr. Joseph DiJanni.
11	2	Well, do you know a John DiJanni?
12	A	Yes sir, I do.
13	Q	In wha. connection do you know Mr. DiJanni?
14	As he was ref	erred to as a cooperating individual?
15	4	THE WITNESS: Again, your Honor
16		THE COURT: No. You have to answer now.
17	A į	Yes, he is.
18	Q	Now, did John DiJanni we'll call him John
19	DiJanni but I	'11 produce evidence
20		MR. SCOTTI: Objection.
21		MR. MESSINA: You can't do that. Just
22	call h	im John.
23	Q	Did John DiJanni introduce you to Mr. Licursi?
24	A	Yes sir he did.
25	Q	Now, is Mr. John DiJanni a cooperating individua

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# 2 according to your terms?

3 A Not at the present time.

Q But at the time he introduced you to Mr. Licursi: was he a cooperating individual?

A Yes, he was.

Q A cooperating individual is really a euphemism for the word "informer"?

A That's another term used.

Q And could you describe the circumstances which made Mr. DiJanni an informer? Why was he an informer?

MR. SCOTTI: Objection, your Honor.

THE COURT: Bad question.

Q Was Mr. DiJanni under indictment for a completely separate case in or around the time that he introduced you to Mr. Licurs!?

A Yes, he was.

And was that the crime of knowingly conspiring to possess and distribute a schedule II controlled substance, namely, cocaine? Was that the crime for which he was indicted at the time that he introduced you to Mr. Licursi?

A Yes.

Q Was Mr. DiJanni ultimately -- did he plead guilty in that case as far as you know?

A As I recall he pled guilty, yes.

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### Brzostowski-cross

	BIZOSTOWSK1-CTOSS
1	73
2	Q Do you recall his sentence, Mr. Brzostowski?
3	Was he given a suspended sentence as far as you know?
4	MR. SCOTTI: I am going to object.
5	THE COURT: No. I will allow this.
6	Q Was that a suspended sentence?
7	A I recall probation.
8	Q But he did not have any jail time; is that
9	correct?
10	A That is correct.
11	Q Now, at the time of your initial now I
12	think your testimony is that Mr. DiJanni introduced you to
13	Mr. Licursi?
14	AL. Dieure
15	A That is correct.
16	Q Was that a face-to-face initial contact or was
	that a telephone contact or what?
17	A That was a face-to-face contact.
18	Q Now, prior to that face-to-face contact had you
19	ever seen or met Mr. Licursi before?
20	A No sir, I had not.
21	Q Now, were you the agent were you involved in
22	the arrest and subsequent prosecution of Mr. DiJanni in his
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	Q And were you directly in an undercover buy for

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MR. SCOTTI: I object o the detail

the Government on that particular conviction?

of that. I don't see the relevance.

THE COURT: I will allow one or two questions more.

A May I have the question again?

My question is, were you directly involved in the prosecution -- perhaps, not the prosecution -- but the investigatory work that led up to the conviction of Mr. Di Janni in New Jersey?

A Yes, I was.

Q So, you were part of the prosecution's effort to convict Mr. DiJanni; is that correct?

A That is correct.

Now, did Mr. DiJanni supply you information regarding Mr. Licursi?

A Yes, he did.

Q And what was the information he supplied you?

A That Frank Licursi was dealing in cocaine.

Q Was dealing in cocaine?

A Yes sir.

Q In other words, was a trafficer, perhaps, in cocaine; a dealer?

A A dealer.

1	75
2	Q Making a market in cocaine?
3	A He told me that Frank Licursi had cocaine to
4	sell.
5	Q Now, how long prior to your initial contact
6	with Mr. Licursi had you been in touch with or in communica-
7	tion with Mr. DiJanni for how long?
8	A All together, I knew of Mr. DiJanni for a
9	period of approximately say ten months.
10	Q And did you know whether Mr. DiJanni was in
11	fact himself a trafficer in drugs? Did you know that?
12	A We arrested him for trafficing in drugs.
13	Q In other words, Mr. DiJanni himself was a traf
14	ficer in drugs; is that right?
15	A Yes sir.
16	Q Now, so that it is clear in the minds of the
17	jurors as to when your initial contact with Mr. Licursiwas,
18	will you tell us when that date was?
19	A I originally met Mr. Frank Licursi face-to-fac
20	on May 5, 1974.
21	Q And your prosecution of Mr. DiJanni occurred,
22	would you say, several months prior to that?
23	MR. SCOTTI: Your Honor, it was not
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rafficing in drugs. iJanni himself was a trafear in the minds of the act with Mr. Licursiwas, Frank Licursi face-to-face of Mr. DiJanni occurred, to that? or, it was not the agent's prosecution of Mr. DiJanni. Well, the Government prosecution in which you

were a participant, was that several months prior to your initial contact with Mr. Licursi?

A Yes, it was.

Q Now, how did Mr. DiJanni come to your work with you as a cooperating individual? Whose idea was it? Was it his idea or your idea? Explain that to thejury.

A When an individual is arrested on federal narcotics charges it is our policy to interview or approach him
and ask if he is interested in working with the Government
and whether he is interested in supplying information to the
Government.

Q Agent Brzostowski, was it your idea to have him cooperate or Mr. DiJanni's idea?

A I would have to say it was joint.

Q But who made the initial -- let's say, who put it forward, the idea, initially -- was it you or Mr. DiJanni?

A I would say me at the time of the arrest.

Q And what exactly did you promise Mr. DiJanni, if anything? What kind of pressure did you want to put on him?

MR. SCOTTI: Objection to the words "promises" and "pressure."

THE COURT: Yes.

Rephrase it as to whether there were

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promises made.

Q Were there promises made to Mr. DiJanni?

A No, there thre not.

Why should he cooperate? Did you promise him anything? Did you promise him that you would intercede with the prosecutor to let him know about the cooperation? I mean, did you do anything?

A When an individual is cooperating and has a charge his cooperation is made known to the Court.

Q I'm talking about Mr. DiJanni, not your general policy.

A That's the same that was offered to Mr. DiJanni.

His cooperation would be made known to the Court.

Did you in fact do that? Was his cooperation made known to the Court prior to his getting a suspended sentence?

A Not directly by myself to the Court. This was through the probation department this time.

Q Did you in fact personally speak to a member of the probation department about that?

A Yes.

Q What did you tell them regarding Mr. DiJanni?

That he had cooperated with the Government.

Q Did you tell them how he cooperated with the

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Government?

A No, I did not.

Now, when you jointly approached the subject with Mr. DiJanni of cooperation, how did Mr. DiJanni take this? Did he grab at the chance of getting a lighter sentence?

MR. SCOTTI: Objection. There has been no testimony about lighter sentences or anything like that here.

THE COURT: Objection sustained.

Q How did Mr. DiJanni react to your joint -THE COURT: I think the question is,
did he, in view of that, decide to cooperate.

Q How did Mr. -- what was Mr. DiJanni's reaction to your proposal of cooperation?

A Mr. DiJanni said he'd have to talk it over with his attorney.

Q And did you meet with Mr. DiJanni's attorney regarding that proposal?

A I did not meet with him directly, no.

Q Did one of the agents?

A I believe another U.S. Attorney discussed it with Mr. DiJanni.

I wasn't present at the meeting but as I understand

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it.	his	attorney	met	with	the	U.S.	Attorney	
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- Q Were you apprised of the outcome of that meeting?
- A Yes. I was told Mr. DiJanni wanted to cooperate.
- Q Was it after this meeting of the minds, so to speak, that John DiJanni mentioned Frank Licursi's name to you?
  - A It was subsequent to that time, yes.
- Q Was it a direct consequence of that cooperation pact, so to speak, that he mentioned Mr. Licursi's name?

MR. SCOTTI: I don't understand the question.

THE COURT: Well, I think he wants to ask him whether or not he was one of the first individuals he mentioned after the time of cooperation.

MR. SCOTTI; I'm sorry. I didn't understand it.

MR. MESSIMA: Well, not the first one -just a person.

- Q Was a direct result of that pact between Mr.

  DiJanni and the Government to bring forth Mr. Licursi's name?
  - A Yes. It was after that when Frank Licursi's

name was mentioned.

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Q And did Mr. DiJanni mention to you that Frank
Licursi was a trafficer in drugs?

- A He told me that Frank Licursi had drugs to sell.
- Q He didn't use that word "trafficer"?
- A No. I'm trying -- he didn't use that terminology. I am trying to remember what he did say.
- Q Did he mention to you that Mr. Licursi had a prior record?

MR. SCOTTI: Objection. Irrelevant.

THE COURT: Sustained.

Q Did you and Mr. DiJanni make any sort of plan to try to carry out, to try to ensnare somebody?

MR. SCOTTI: Objection.

THECOURT: Bad question.

- Q Did you in fact discusse plan by which you were going to operate and try to do your job?
  - A Yes.
  - Q And what kind of a plan did you devise?
- A I was told that I could be introduced to Frank

  Licursi and that I could negotiate with him myself to purchase

  cocaine.
  - Q Who said that?

as a broker?

		81
		The cooperating individual.
	Q	Whose name is, what?
	A	John DiJanni.
	Q	Did John DiJanni tell you that he was a real
1	estate or ins	urance broker by profession?
7		MR. SCOTTI: Objection.
3		MR. MESSINA: I'm trying to bring out
9	the fa	ct that any contact
0		THE COURT: I'll allow the question.
1	Go ahe	ad.
2	A	I wasn't aware of Mr. DiJanni's occupation.
3	Q	Were you aware of the fact that John DiJanni was
5	handling insu	rance policies for Mr. Licursi's girlfriend?
6	A	No sir.
7	Q	Were you aware of the fact that John DiJanni
.8	had met Mr. I	cicursi on several occasions ?
9	A	He had told me that he had met Frank Licursi
20	several times	
21	Q	Were you aware of the business relationship
22	between John	DiJanni and Mr. Licursi's girlfriend?
23	A	No, I wasn't.
	Q	DiJanni didn't ever mention that to you the

fact that he had policies of insurance that he was handling

### Brzostowski-cross

	Brzostowski-cross
1	82
2	A I wasn't interested in insurance.
3	Q And he didn't mention it to you?
٥.	A That wasn't our topic of conversation when we
5	met.
6	Q Did you ever go to school with Mr. DiJanni?
7	A No.
8	Q Did you your initial contact, of course,
9	was during the prosecutorial phase of it when Mr. DiJanni
10	was arrested for conspiracy to distribute cocaine? That
11	was your initial contact with Mr. DiJanni; right?
12	A Yes sir; that is correct.
13	Q Well, I think I asked you a question. I don't
14	remember what your response was.
15	Did you and Mr. DiJanni come to any sort of a
17	plan which you could operate?
18	A Yes, we did.
19	Q What was that plan?
20	A I was told that I could be introduced to Frank
21	Licursi and talk with him myself about purchasing cocaine.
22	Q Now, did
23	A (continuing) And I believe
24	Q (continuing) Now, did Mr. DiJanni make any
25	telephone call to Mr. Licursi?
	A None that I know of that I was directly there

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2	with.

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Q You never heard a telephone conversation between John DiJanni and Mr. Licursi?

A No sir.

Q You never were present?

A No sir.

Q Did you ever instruct or did Mr. DiJanni ever volunteer information to the effect that he was going to initially make a telephone call to Mr. Licursi?

A I don't recall his saying a telephone call.

Q Do you know how Mr. DiJanni in fact contacted Mr. Licursi?

A I have no idea whether he called him or went to see him personally or whatever he did.

Q But, in any event, that was not part of your prescribed plan, so to speak?

A I don't --

MR. SCOTTI: I will object to that question.

The agent testified twice that he was told that he could be introduced to the defendant, Frank Licursi and discuss the purchase of cocaine directly with Frank Licursi.

THE COURT: That's what he says.

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Q Did Mr. DiJanni initially make the contact for you?

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A Yes sir.

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Q And did he relate -- did DiJanni relate the information back to you?

7

A Yes.

8

Was that face-to-face or how was that done?

9

A Telephone.

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He phoned you at your office, is that it?

11

Yes.

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Now, what did DiJanni exactly say to you?

13

A I don't recall exactly what he said.

14

Q Well, approximately.

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A He told me that he knew an individual by the name of Frank Licursi who had a girlfriend, Jennifer and Frank had a connection and he would be able to sell me cocaine.

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Q That was one telephone conversation?

18

A Yes sir.

19 20

Q And how long or how soon prior to the 5th was

21

that date?

22 23

A That was the Friday before, I believe, it might have been the third.

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Q And that was the extent of the conversation; is that right?

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A That was it.

Q Was that the only telephone conversation you had with Mr. DiJanni regarding Frank Licursi?

A I called him on May 5th to arrange where to meet him at, that day.

Q Called who?

A John DiJanni.

Q So, there was one telephone conversation which you had with John DiJanni regarding Frank Licursi.

A That's the one, the only one I recall, yes.

Q in which the statements you previously testified to were made; is that correct?

A That is correct.

Q And then the only subsequent conversation was the one that happened on the 5th?

A That is correct.

Q And that conversation was between DiJanni and yourself. Frank Licursi didnt talk to you on the telephone, did he?

A No, he did not.

Q What did Frank Di Janni tell you on the 5th?

A Frank DiJanni?

Q I'm sorry -- John DiJanni.

A He didn't say much.

1		86
2		Icalled him up and told him I would meet him
3	at a certa	ain time at a certain place and he agreed to it.
4	Q	Where was that place?
5	A	Where was it?
6		MR. SCOTTI: Objection.
7		MR. MESSINA: What's the objection?
8		MR. SCOTTI: Irrelevant.
9		THE COURT: No. I will allow it.
10	A	I believe in Hasbruck Heights, New Jersey.
11	Q	Did he give you an address to go to?
12	A	No, he did not.
13	Q	Well, how did you know where to go?
14	A	We decided to meet on the street.
15	Q	With John DiJanni?
16	A	Yes.
17	Q	Did you meet in New Jersey?
18	A	It was in New Jersey, yes.
19	٥	Like close to Fairlawn?
20	A	It was Beryen County, New Jersey in Hasbruck
21	Heights.	I don't remember exactly where now.
22	Q	You gave him a cross section of a street and
23	he drove	there?
24		What is correct

You had your Government vehicle and he had his

		Brzostowski-Cross
1		67
2	own vehicle?	
3	Α	Correct.
4	Q	Did you search him?
5	A	Yes.
6	Q	Why did you search him?
7	A	Again, that is D.E.A. policy.
8	Q	What does "D.E.A." mean?
9	A	"Drug Enforcement Administration."
0	Q	What is the policy?
11	A	To search individuals we come in contact with
12	for weapons,	contraband, things of that nature.
13	Q	Don't you search them to see whether they are
14	carrying coc	aine or other drugs on them?
15	A	That's contraband, yes.
16	Q	Oh, that's contraband?
17	A	Yes sir.
18	Q	Now, your initial contact now, did DiJanni
19	come to your	car or did you go to his car? How did that
20	work out?	
21	A	I really don't remember. I think he got into
22	my car.	
23	Q	What did you discuss, if anything?
24	- A	Where we were going. He told me "We have to

go to Fairlawn."

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A He told me "We have to go meet Frank in Fair-lawn."

We talked about how to get there. We decided I would follow in my car.

Frank was expecting to make a cocaine deal.

A John DiJanni -- and that a guy by the name of Gene would be there who was the connection for the cocaine.

Q Mr. DiJanni told you all this information?

A Yes, he did.

Q What happened after that?

Who is talking now?

A We decided that I would drive in my car and he would drive in his car separate.

Q Did you make an arrangement with him whereby after a certain part of the meeting was over he would leave?

A No, that wasn't part of the agreement.

Q Was he supposed to stay there?

A Where?

Q At the place you were going to?

A He was supposed to introduce me to Frank Licursi and then he had other plans and he left.

Q He had other plans?

A Private, personal plans.

6PP 56

# Brzostowski-cross

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1		89
2	Q	Did he inform you of these plans?
3	A	He said "I've something to do this evening."
4	so I said	"Okay."
5	Q	As far as you were concerned, his presence
6	wasn't nece	ssary?
7	A	Once the introduction had taken place, no.
8	Q	Then you got to Fairlawn, New Jersey?
9	A	Yes sir.
10	Q	And did you meet Frank Licursi?
11	A	Yes I did.
12	Q	Did he take you upstairs?
13	A	Yes, he did.
14	Q	Were other people around?
15	A	Yes, they were.
16	Q	Who was around?
17	A	Eugene Caufield, Phyllis Caufield
18	Q	His wife?
19	A	I believe so.
20	Q	Who is not a defendant in this action; correct?
21		MR. SCOTTI: Objection.
22		THE COURT: She is not a defendant.
23	No	question about it.
24	Q	Who else was present?
25		and Jannifar Jannifer Lisa

	DE 208 COWSKI-CTOSS
1	90
2	Q Is that a first and last name?
3	A I believe "Jennifer" is her first name and "Lis
4	is her last name.
5	Q She is not a defendant in this action, is she?
6	A No, she is not.
7	Q Who else was there?
8	A Myself, the cooperating individual and Frank
8	Licursi.
10	Q So, there is no mistake about who we are taking
11	about, the cooperating individual, that is John DiJanni?
12	A That is correct.
13	So, there is Licursi in the room, his girlfriend
14	Phyllis excuse me there's Licursi, his girlfriend
15	Jennifer; there's Caufield, Caufield's wife, Phyllis; there'
16	yourself and there's John DiJanni. Six people in the room?
17	A Yes.
18	Q Is it like one big room?
20	A Yes, it was.
21	Q So, there was really no chance of anybody being
22	there and hiding someplace?
23	A No. You can see. It's an open room.
24	Q Like a studio; right?
24	A Vac

Who made the initial -- were you introduced to

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	Brzostowski-cross
	91
Frank Licursi	?
Α ,	Yes, I was.
Q	By whom?
A	By John DiJanni.
Q	And what did he say?
A	He said "This is Joe, the guy who wants to buy
the coke."	
Q	Is that what he said?
Α	Yes, he did.
	He also referred to me as "My man." He said
"This is my a	an."
Q	Now, what did did Licursi introduce you to
anybody else?	
A	Yes. He introduced me generally to everyone
in the room.	
Q	Including the girls?
A	Yes.
Q	How long did you stay in the room before you
left?	
A	Approximately 20 minutes.
Q	While you were there did you see any coke around?
A	No, I did not.

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MR. SCOTTI: Objection.

Did you see any narcotics of any sort around?

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THE COURT: Where is this?

MR. MESSINA: On the 5th at the

apartment.

THE COURT: No. I will allow it.

A No.

Q Did you notice any scent of any narcotics around?

A No, not that I recall.

Q You didn't see any stuff, right?

A No, I didn't.

Q You didn't smell anything?

A No, I didn't.

Q How long did you stay in the apartment?

A Approximately 20 minutes; 15, 20 minutes.

Q And then you left?

A That is correct.

Now, you got back into your car?

A Yes, that's right.

Q And were you proceeding west on Route 4?

A That would be east on Route 4.

Q East on Route 4.

Now, it was your testimony that Frank Licursi, his girlfriend Jennifer, Caufield, who is a defendant in this action but pleaded guilty yesterday -- was David Corr with you during that motorcade, so to speak?

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2	A No, he wasn't with us at that time.
3	Q Had you ever seen David Corr before?
4	
_	A No.
5	MR. MESSINA: Ladies and gentlemen of
6	the jury, David Corr pleaded guilty yesterday
7	MR. SCOTTI: I feel duty bound to object
8	to the fact that other people in this case may
9	or may not have pled guilty.
10	The jury is to decide the guilt or
11	innocence of this individual, not the other
12	defendants.
13	THE COURT: The evidence is to be
14	determined separately against each individual.
15	MR. MESSINA: I merely mention these
16	things to put a fence around
17	MR. SCOTTI: I would object to any
18	statements.
19	THE COURT: No statements, please.
20	MR. MESSINA: All right.
21	CROSS EXAMINATION
22	RV MP MESSINA CONTENTIENCO

this case may guilt or the other s to be h individual. tion these t to any please. Now, you did not leave New Jersey that night, did you? No, I did not.

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	Q · A	nd the res	t of the peop	ole, Corr no	t Corr -
excuse	me Ca	ufield, hi	s wife, Licur	si, his girlfr	iend,
headed	towards,	perhaps,	over the Geor	ge <b>Washington</b>	Bridge?

- A That's the last way I saw them heading.
- Q That is the last you saw of any of them that night; is thatcorrect?
  - A Correct.
- Now, you testified to several conversations which you had with Caufield, telephone conversations which you had on the night of the 5th; correct?
  - A That is correct.
- Q Now, the last person you spoke to on the telephone on the night of the 5th, who was that?
  - A Frank Licursi.
  - Q It wasn't Caufield?
  - A I'm positive it was Frank Licursi.

    MR. MESSINA: I have here your Honor,

    what they call 35 hundred information and it

is not --

THE COURT: Mark it for identification.

MR. MESSINA: I'll mark it for identification. I don't want to mark it in evidence.

THE COURT: No. just for identification.

You can ask him questions. Do you want

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to show it to him and ask him if that refreshes his recollection?

THE WITNESS: That last question, I was confused.

THE COURT: He wants to change his testimony.

THE WITNESS: The last person I spoke to is Gene Caufield.

MR. MESSINA: I'm glad you said that.

MR. SCOTTI: I'd like the record to reflect that the Government provided that information to Mr. Messina.

MR. MESSINA: We have a statement in here --

THE COURT: He now acknowledges that the last person he spoke to was Gene Caufield.

MR. MESSINA: Who pled guilty yesterday.

MR. SCOTTI: May we have a side bar?

THE COURT: I don't think it will do

any good.

Let's not go through this again.

MESSINA: All right.

THE CLERK: Defendant's exhibit A for identification.

		Brzostowski-cross
1		96
2		(So marked.)
3	Q	Now Agent Brzostowski, did you have a meeting
4	with Gene Cau	field the very next day?
5	A	Yes.
6	Q	Was there anybody present at that meeting?
7	A	Yes.
8	Q	Was Frank Licursi present?
9	A	No, he was not.
10	Q	Did you speak with Frank Licursi on the 6th,
11	that day?	
12	A	No.
13	Q	Did you have any communication with him on the
14	6th? Did you	see him, speak to him, call him, pass a message
15	to him did	you have any communication with him at all on
16	the 6th?	
17	λ	No, I did not.
18	Q	That is the day when the alleged sale took place
19	correct?	
20	A	Yes sir.
21	Q	Who was present at that time?
22	A	Myself, Special Agent Morrissey and Gene
23	Caufield.	
24	Q	Let's go to the 7th.

Did you have any contact with Gene Caufield on

25

the 7th?

is.

MR. SCOTTI: Objection.

THE COURT: Yes. It's after the fact.

MR. MESSINA: I know your Honor, but it involves possible information which could be beneficial to us.

THE COURT: You better tell me what it

(Side bar discussion between Court and counsel as follows:)

MR. MESSINA: Dana Dynes was one of the defendants in this action and her name didn't come up until after the sale, anyway.

If the Government was able to indict somebody after the fact, I am entitled to go into it to show whether or not my client had any connection with that.

MR. SCOTTI: No. That's got nothing to do with anything.

whether or not the Government develops evidence at a subsequent time as to the source of the cocaine has nothing to do with the participation in the crime.

THE COURT: They are only charging the

aiding and abetting.

MR. SCOTTI: I would like your Honor to instruct Mr. Messina not to mention any other times anyone else pled guilty.

The impropriety of that is twofold:

It may prejudice the jury against this defendant by the implication that everyone else pled guilty so he must be guilty and the jury should not consider that. Also, it has a reverse effect that Mr. Messina is introducing it in terms of everyone else pled guilty but this guy didn't so he must be innocent.

THE COURT: That's why he is doing it.

Don't do it again.

(Conclusion of side bar discussion)

(Following held in open court)

THE COURT: All right, we will take our luncheon recess now. Be back at two o'clock.

Do not discuss the case.

(Jury excused for luncheon recess)

MR. SCOTTI: Your Honor, at this time I would request that you ask Mr. Messina if he wishes to have a charge to the jury that they have to consider the evidence only against this

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defendant, Mr. Licursi and not consider any other statements made by anybody else who may or may not have been involved in this case.

THE COURT: I already told the jury that.

(Luncheon recess taken)

(continued on next page)

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(AFTERNOON SESSION)

THE COURT: Do you have any more

questions?

MR. MESSINA: One more.

JOSEPH BRZOSTOWSKI, having been previously duly sworn by the Clerk of the Court resumed the witness stand and further testified as follows:

(Whereupon, the jury entered the courtroom.)

THE COURT: All right.

CROSS EXAMINATION

BY MR. MESSINA CONTINUING:

MR. MESSINA: I am almost finished with this witness.

Q Agent Brzostowski, did you ever give any money for any reason to Mr. Licursi?

A No sir, I did not.

Q Did Mr. Licursi ever ask you for any money?

A No sir.

MR. MESSINA: Your Honor, I would like to introduce into evidence the conviction of John DiJanni.

THE COURT: It serves no purpose. Mark

	Brzostowski-cross
1	101
2	it for identification. But it will serve
3	no purpose.
4	MR. MESSINA: Mark it for identification.
5	THE COURT: Yes.
6	MR. MESSINA: Mark it defendant's 2,
7	I believe.
8	THE COURT: It will be B.
9	THE CLERK: Document marked for identi-
10 .	fication as defendant's exhibit B.
11	(So marked)
12	MR. MESSINA: Do I keep it?
13	THE CLERK: Yes.
14	THE COURT: All right, no other questions?
15	MR. MESSINA: I am through with this
16	witness.
17	THE COURT: Any other questions?
18	MR. SCOTTI: No, your Honor.
19	THE COURT: All right, you may step
20	down. Thank you.
21	(Witness excused.)
22	THE COURT: Any other witnesses?
23	MR. SCOTTI: Your Honor, the Government
24	rests.
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THE COURT: The Government rests.

Would you mind stepping out for a few moments, please?

(Whereupon, the jury exited the courtroom.)

MR. MESSINA: If your Honor please, at this time, I make a motion for acquittal, for a directed verdict of acquittal, based on the fact that the Government has not proved a prima facie case.

MR. SCOTTI: Your Honor, the Government's position obviously would be that the Government has produced a prima facie case. The charge, as your Honor well knows, is that the defendant aided and abetted in the sale.

THE COURT: Under Section 2. How about the regular section for distribution?

MR. SCOTTI: It doesn't make any difference as to the section on distribution. It's in terms of whether or not the defendant was actually there.

THE COURT: That's not the point. Whether or not he was instrumental in its distribution.

MR. SCOTTI: Well, the Government would maintain that he was instrumental, and by the

fact of the introduction it made it possible for the defendant Caufield to meet with the special agent and to transfer the narcotics to him. I think the evidence clearly has shown that distributing the narcotics — all right.

MR. MESSINA: I am sorry.

MR. SCOTTI: I think the evidence has clearly shown that this defendant was the man who made the introduction. That's all the Government is really charging him with, the aiding and abetting, by making the introduction which facilitated the narcotics transaction.

I think the evidence clearly shows there was a transaction and that this transaction was a direct result of the introduction made by the defendant.

MR. MESSINA: Your Honor, may I just
state for the record that with all due deference
to the U.S. Attorney, I do not believe the
evidence produced so far -- and the Government
rests its case -- I do not believe that the
-- there is a connection shown, actual proof
shown between the alleged distribution on the 6th

and my client's alleged introduction on the 5th.

MR. SCOTTI: Well, the testimony, your Honor, clearly shows --

THE COURT: Well, at this point, in any event, it is just a question of prima facie proof on the Government's case. And on the -- on the entire case it would be on the question of reasonable doubt as a matter of law.

MR. MESSINA: Yes, your Honor.

MR. SCOTTI: Well, your Honor --

THE COURT: At this time I think I have to deny your motion as to prima facie proof.

MR. SCOTTI: Your Honor, I would also point out that the testimony clearly showed that the defendant knew that the transaction was going to be a cocaine transaction. Now, cocaine is a fungible good. The evidence -- there was no evidence that this defendant knew the specific cocaine that was eventually sold.

I shouldn't say eventually. It was sold the next day. As a matter of fact, the cocaine was supposed to be sold that night and that the

defendant was going to be present at that sale.

THE COURT: It didn't happen that way.

MR. SCOTTI: It doesn't make any difference with aiding and abetting, we would maintain.

Now, to say that this defendant didn't know that the actual cocaine, the specific cocaine that was going to be sold, to me, is irrelevant. He did know cocaine was going to be sold.

THE COURT: It doesn't make any difference.

I agree with you. It is a question of whether

or not -- well, I have ruled on it as far as the

Government's case consisting of prima facie --

MR. MESSINA: May I make a point?

THE COURT: At this time I will deny the motion.

MR. MESSINA: All right, your Honor.

I have request to charge which I have drawn up.

And I think the clerk has indicated that -
he asked me about them. Now, in the request

to charge, I have a charge regarding entrapment.

That deals with entrapment. And I will submit

the charge to you.

THE COURT: You have a very weak situation as far as entrapment. You have a fairly good situation as far as reasonable doubt.

MR. MESSINA: Well --

THE COURT: I think the entrapment -you're relying on entrapment in this case.

It is not with all -- within the rules of this
second circuit.

MR. MESSINA: Your Honor, I will rely on everything --

a specific purpose. And there's no question that they are proper under the law and they are -- properly can talk to persons or give information as to persons who may be believed to be trafficing in such items. And even to the extent of placing the item in their -- obviously within their reach so that they can consummate a deal and it would not be entrapment.

MR. MESSINA: Your Honor --

THE COURT: I would probably charge it.

But I don't think you have a situation of entrapment in this case.

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We are ready to start and we are on the defendant's ease.

Mr. Messina?

MR. MESSINA: The defense calls Frank Licursi.

FRANK LICURSI,

having

first been duly sworn by the Clerk of the Court took the witness stand and testified as follows:

THE CLERK: State your name and spell it for the record, please.

THE WITNESS: Frank Licursi, L-i-c-u-r-s-i.

## DIRECT EXAMINATION

### BY MR. MESSINA:

Now Mr. Licursi, would you tell the jury your date of birth?

- A January 12, 1952.
- Q Which makes you a little over 23 years old?
- A Correct.
- Q Where do you reside, Mr. Licursi?
- A 1-43 Plaza Road, Fairlawn, New Jersey.
- Q Is that an apartment?
- A Well, it's a single family house. We are renting the above floor.

2 Q How much do you pay?

A Sixty dollars a week -- a month -- excuse me.

Q Mr. Licursi, are you -- would you tell the jury a little bit about your educational background?

A I graduated high school and I am attending night school as an apprentice electrician.

Q When did you get into the electrician's program?

A Approximately five years ago.

Q Is your father an electrician?

A He belongs to the same union I belong to but he is not an electrician. He works for Federal Pass Electric Company.

Q Have you been employed from the time you graduated high school and not into this program until --

A Until now.

At the present time I am unemployed.

Q Will you tell the jury when you were laid-off?

A I was laid-off last week.

There was a cut-down in our shop and they had to layoff 30 men.

Q A general layoff, nothing connected with this case?

A Oh, no.

Q Up to that time you were employed steadily,

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2	employed during the day and went two nights a week to, where?
3	A Charles Evans Hughes School downtown.
4	Q Tell the jury a little bit about the school.
5	A The apprenticies attend school two nights a
6	week; half the class on Tuesday and Thursday and the other
7	h alf on Monday and Wednesday.
8	Q And the apprenticeship would make you, what?
9	A A journeyman.
10	Q A journeyman electrician?
11	A Right.
12	Q Mr. Licursi, have you ever been arrested in your
13	whole life for anything?
14	A No.
15	Q For anything?
16	A Anything.
17	Q Have you been convicted, ever convicted for any-
18	thing?
19	A No.
20	Q Where were you born, Mr. Licursi?
22	A In Brooklyn, New York.
23	Q And I think you mentioned to me that subsequent
24	to that your family moved to New Jersey?
25	A Correct.

About how old were you when you moved to New

Jersey?

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A About ten years old.

Q And you and your family reside together in the State of New Jersey?

A Correct.

Q And approximately when was it that you got this apartment?

A About a year and a half ago.

Q And you resided in this apartment in Fairlawn up to this very day; is that correct?

A Correct.

Now Mr. Licursi, did you know one John DiJanni?

A Yus, I do.

Q And approximately when did you first meet Mr.

John DiJanni?

A Well, the girl I am going out with now, Jennifer Lisa, attended high school with Mr. DiJanni and he is or was an incurance salesman and she had a policy with Mr. DiJanni and I first came in contact with him about a year ago.

Q About a year ago?

A Right.

Q Did you personally have any business contacts with this fellow, DiJanni?

A Well, at that time he was in the insurance

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business. He had asked me if I was interested in his type of insurance. I told him was not and Miss Lisa didn't want to continue her policy anymore with Mr. DiJanni so she subsequently let her policy run out.

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Now, did there come a time in early May when Mr. DiJanni phoned you up at your apartment in Jersey: is that correct?

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A Yes.

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Q When was the last time you saw him prior to that telephone call?

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A Well, I was at a concert in Passaick, New
Jersey --

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Q Approximately?

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A Approximately three months prior to that.

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Q Now, Mc DiJanni phoned you up. What did he say to you?

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A He asked -- he told me that he a friend of his -- well, he asked me if I had any cocaine, any coke.

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Q He used the word "coke"?

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A "coke" -- and I told him that I didn't.

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Q Did he indicate that he was looking for somebody else or for himself?

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A He told me a friend of his was interested.

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Q Did he mention his friend's name?

### Licursi-direct

		Licursi-direct
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	A	I don't believe so.
	Q	You don't believe so.
		Did he mention a specific amount of coke? I
am ta	lking abo	out that initial telephone conversation.
	A	I don't believe so.
	Q	Did he mention anything about money?
	A	Not at that time.
	Ω	And what did you say to Mr. DiJanni?
	A	Well, I told him that I wasn't dealing in coke
and t	hat I had	dn't known anybody who had coke.
	Q	Had Mr. DiJanni ever mentioned anything to you
prior	to that	about coke?
	A	No.
	Q	Yes or no?
	A	No.
	Q	And had he mentioned anything to you prior to
that,	to that	telephone conversation, ever since you knew
him,	anything	about any other type of drug?
	A	Did he ever I don't understand that question.
	Q	Well, prior to that telephone call had Mr.
DiJan	ni mentio	oned to you anything about drugs, anything what-
soeve	r about d	drugs?
	A	I don't believe so.
	0	Now. Your response to Mr. Di Tanni was would

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1	128
2	you repeat that again?
3	
4	any coke.
5	He asked me if I had any and I didn't have any.
	Q Was that the extent of the telephone conversa-
6	tion?
7	A The first conversation it was.
8	Q And how long did that telephone conversation
9	last, approximately?
10	A Five minutes.
11	Q Was there anybody else listening to the conver-
12	sation as far as you know?
13	A No.
14	Q Now, Mr. DiJanni, did you speak Mr. Licursi
	I'm sorry.
16	Mr. Licursi, did you speak with Mr. DiJanni tha
17	day on which he called you excuse me did you speak to
18	him after that telephone conversation that day?
19	A No, I didn't.
20	
21	and and another to you that day about
22	coke or any narcotic drug?
	* ****

Nobody.

Now, can you pinpoint, as best you can, the date or the day of the week that that telephone conversation took place?

## Licursi-direct

1 129 2 I believe it was on Tuesday. That would have A 3 been the Tuesday before May 5th. 4 Tuesday before May 5th? 5 Right. It could have been Monday or Tuesday. 6 Which I think would make it -- I think it is 7 the first. 8 But, as best you know, it was a Tuesday? 9 It was a Tuesday or Monday. I'm not exactly 10 sure if itwas Monday or Tuesday. 11 Q All right. 12 Did you subsequently have a conversation with 13 one Eugene Caufield? 14 Well, on Tuesday and Thursday I attended school 15 and Mr. Caufield attended school the same nights. 16 We have been attending school the last three 17 years together. That's how I came to know Mr. Caufield. 18 One of our conversations at the school, we were 19 just chatting about school and the electrical industry and Mr. 20 Caufield mentioned to me he was able to get coke. 21 Now, this conversation you had with Mr. Caufield 22 predates this initial telephone call with Mr. DiJanni; 23 cofrect? 24 Correct. 25 And you were going to school with Mr. Caufield for Q

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approximately three years?

A Correct.

Q And you had also gone out with him socially, isn't that correct?

A Correct.

MR. SCOTTI: Did you say predates the telephone call?

MR. MESSINA: In other words, Mr. Caufield's conversation with DiJanni --

MR. SCOTTI: With Mr. Licursi --

MR. MESSINA: With Mr. Licursi -- I'm sorry -- predates the phone conversation Mr. DiJanni had with Mr. Licursi. Predates. It was prior. It was before.

MR. SCOTTI: I thought it was the opposite. I'm sorry.

Q So it is clear in the minds of the jury, you had a conversation with Mr. Caufield?

A Correct.

He asked me -- he told me that he was able to get coke and I told him I was not interested.

Q Did he tell you that because you asked about coke?

A No. Out of the clear blue he just brought up

app 83

1 2 the fact that he was able to get coke. 3 And this occurred at one of these Thursday 4 periodic meetings of the union? 5 A Right. 6 Which you were going to for approximately three 7 years? 8 A Five years. 9 And Mr. Caufield has been going approximately 10 five year s? 11 A Correct. 12 Now, dil you say anything to Caufield about this 13 telephone conversation that you had with Mr. DiJanni? 14 Well, after I spoke to Mr. DiJanni I went to 15 school on a Tuesday -- it could be Tuesday or Thursday --16 the exact date I'm not sure of -- and I mention to Mr. Cau-17 field that Mr. DiJanni called me, a friend of mine called me 18 and told me a friend of his was interested in buying coke. 19 Q Coke? 20 Correct. 21 Did you use the word "cocuine"? 22 No.

"Coke"?

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"Coke."

What did Caufield say?

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2	A Well, he suggested that we get the people
3	that he make the transaction.
4	Q Did Caufield suggest that he set up a meeting?
5	A No.
6	Q What did you do after that?
7	A Friday I received a phone call from Mr. DiJanni
8	and he asked me if I could still get coke and I told him
9	that a friend of mine had coke.
10	Q A friend of yours? You actually don't know
11	whether your friend had coke or not. The friend said he had
12	coke.
13	A Right. He said he had it.
14	Q Was Did Mr. DiJanni suggest setting up the
16	meeting?
17	A Well, the Friday I received a phone call Mr.
18	DiJanni asked me if he could bring his friend over to my
19	apartment.
20	Q Did he ever mention his friend's name?
21	A The Friday phone call I believe he did. He told
22	me his name was Joe.
23	Q Did he mention his last name?
24	A No, he did ht.
	Q Now, did you relate that piece of information

then to Mr. Caufield?

Licursi-direct 1 133 2 A Yes, I did. 3 Was there anything said about money? 4 The Friday that Mr. DiJanni called me he told 5 me that his friend was interested in buying a quarter pound. 6 Q Quarter pound of what? 7 Of coke. 8 Did Mr. DiJanni discuss anything about money? 9 Mr. DiJanni? 10 Yes. 11 No, he didn't. 12 He didn't? 13 No, he didn't. 14 Now, did Mr. DiJanni say that his friend Joe 15 wanted to meet at -- on Sunday, at your apartment? How did 16 that come about? Explain that. 17 The exact way the meeting took place I'm not 18 quite sure about because I don't really remember myself stat-19 ing to Mr. DiJanni and Mr. Caufield to meet over my place. 20 It was mutually agreed upon. 21 Mutually agreed? You've got to make it clear 22 to the jury, if you can. 23 To the best of my recollection I believe it was 24

A To the best of my recollection I believe it was

Mr. DiJanni and myself through the conversation on Friday that

it was decided on Sunday that he would come over with his

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friend Joe.

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Q He would come over with his friend Joe on Sunday to your apartment?

A Correct.

Q Now, did you speak with Mr. -- I think your best recollection is that this last conversation prior to the actual meeting took place on the Friday --

A Right.

Q That's the 4th of May, 1974?

A That's the third.

Q That's the third?

A Right.

Q Sunday is the 5th, Saturday was the 4th -right -- you're absolutely right.

So, that telephone conversation -- was it a telephone conversation?

A Yes, it was.

So that took place on May the third, 1974?

A Right.

Now, after that telephone conversation had you any other communication with either DiJanni or anybody else concerning the meeting of the 5th? After that conversation did you talk to anybody else about it?

A I believe I spoke to Mr. Caufield or Mr. Caufield

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2	called me up and asked me what was going on and I emplained
3	what Mr. DiJanni had proposed to me and he decided that it
4	would be all right Mr. Caufield.
5	Q Now, on Saturday the 4th, did you have any
6	communication with either Caufield or DiJanni or anybody
7	else?
8	A No.
9	Q Now, did a meeting take place on May the 5th,
10	1974 at your apartment?
11	A Yes, it did.
12	Q Now, what time did this meeting take place?
13	A Around seven o'clock.
14	Q In the evening?
15	A In the evening.
16	Q Now, were you present in the apartment around
17	seven o'clock?
18	A Yes, I was.
19	Q Was your girlfriend Phyllis rather
20	Jennifer, present?
21	A Yes, she was.
22	Q Was Mr. Caufield present?
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Speak up a little louder.

Yes.

Yes, hewas.

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# Licursi-direct

1		136
2	Q	Was Caufield's wife present?
3	A	She was also.
4	Q	Phyllis?
5	A	Phyllis.
6	Q	Was there anyone else present that evening?
7	A	Mr. DiJanni was present and Mr. Brzostowski.
8	Q	What time did Mr. DiJanni and Mr. Brzostowski
9	arrive at the	house?
10	A	Approximately a quarter to seven in the evening
11	Q	Did you go to meet them downstairs?
12	A	Yes, I did.
13		Did they say anything to you about coke when
14	Q	
	they saw you	downstairs?
15	A	No, they did not.
16	Q	Did they say anything about price of anything?
17	A	They did not.
18	0	How exactly did you introduce
19	A	Well, I met them downstairs at the front door
20	and Mr. Di.Tar	nni introduced me to Joe. We shook hands and
21	went upstair	
22		And everybody is around in this room?
23	Q	
24	A	Right.
25	Q	Your apartment is essentially a large studio
20	room; corre	ct?

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Right.

So, there is yourself, Mr. Brzostowski, there is John DiJanni, there's Caufield, there's Caufield's wife and your girlfriend Jennifer.

Correct.

And you're all more or less standing around, sitting around?

Correct.

Did you see any coke in the apartment?

No, I didn't.

Was there in fact, to the best of your knowledge, any coke in that apartment or any other narcotic drug?

> No, there was not. A

Have you ever had a narcotic drug in your apartment, ever?

Never.

How long did that meeting last? How long did that get-together last before it started to break up?

> A Approximately 20 minutes.

And during that 20 minutes did you have any conversation with anybody in that room?

Well, the conversation that was in the room was a general conversation.

> About what? Q

1		138
2	A	About it wasn't about anything really.
3		Mr. Caufield and Mr. Brzostowski were talking
4	on the side.	
5	Q	Were they talking with Caufield?
6	A	You mean, Mr. Brzostowski?
7	Q	Yes.
8		Was he talking with Caufield?
9	A	Yes, he was.
10	Q	Could you hear what he was saying?
11	A	No, I couldn't.
12	Q	Was Mr. DiJanni speaking with Mr. Caufield?
13	A	I don't believe so.
14	Q	Were the two girls talking to Mr. Caufield?
15	A	Mr. Caufield?
16	Q	Yes.
17		At the time he was talking to Mr. Brzostowski?
18	A	
19	Ω .	Yes.
20	A	No.
21	Q	Did you have anything of an alcoholic nature to
22		those 20 minutes?
23	A	No sir.
24	0	Did you have any bottles of liquor around or
25	were you boo	zing it up?

No.

		Licursi-direct
1		139
2	Q	Were there any drinks served ?
3	Α	Nothing, not even water.
4	Q	Now, at that point did somebody say that you
5	were going to	Brooklyn?
6	A	Yes.
7	Q	Not you in particular but that some people were
8	going to Brook	klyn?
9	λ	Correct.
10	Q	Who said that?
12	λ	Mr. Caufield.
13	Q	What exactly did he say?
14	A	He said "We're going to Brooklyn."
15	Q	Did he say why you were going to Brooklyn?
16	A	I don't believe so.
17	Q	Did Mr. Caufield ask you to do something?
18	λ	Mr. Caufield
19	Q	Yes or no?
20	A	Yes.
21		What did he do?
22	A	He had come over to my place on a motorcycle
23	with his wife	
24		It was during the day, approximately an hour
25	before Mr. Di	Janni and Mr. Brzostowski came and when they

went to Brooklyn it was cold out and his wife didn't want to

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1		140
2	ride on the b	ack of the motorcycle and he asked me if I
3	could take he	r to Brooklyn with the car.
4	Q	Now, at that point what did you do?
5		Do you own a car?
6	A	Yes, I do.
7	Q	Describe it for the jury, please.
8	A	It's a 1969 blue Volkswagon.
9	0	Now, during that 20 minutes did you hear any-
10	body use the	word "coke"?
11	A	I believe Mr. Brzostowski had mentioned some-
12	thing about o	oke.
13	Q	Did you use the word "coke"?
14	A	I don't think so.
15	Q	Did Mr. Caufield use the word "coke"?
16	A	I believe so.
17	Q	You believe so?
18		Yes.
19		Did any of the girls use the word "coke"?
20		No, they did not.
21		Did Mr. Caufield produce any narcotic of any
22		appeared to be a narcotic during that 20 minute
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	l A	No, he dld not.

So, did anybody in that room produce anything

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that looked like narcotics during that 20 minute conversation?

No.

Now, would you describe to the jury how you eventually got from your apartment into your respective cars?

Well, Mr. Caufield said "We're going to Brooklyn" and Mr. Brzostowski asked "How come " and he stated the coke was in Brooklyn.

Who said that?

Mr. Carfield.

So, Mr. Brzostowski agreed to go to Brooklyn.

With that he left and went into his car and Jennifer and Phyllis Caufield entered my car and Mr. Caufield got on his motorcycle.

How about Mr. DiJanni?

Mr. DiJanni, he had another apointment and could not attend.

Did you know of any coke deal that was going to take place in Brooklyn?

No. I did not.

As far as you know, you went to Brooklyn to do Caufield's wife a favor; is that correct?

correct.

Now, as you were heading for Brooklyn -- by the way, who was in the lead car?

# Licursi-direct

1		142
2	A	I'm not too sure on who was in the lead car.
3	Q	Or, it could have been lead motorcycle because
4	Mr. Caufield	was on the motorcycle?
5	A	That is correct.
6	Q	Do you know who was leading this parade?
7	A	I don't really remember.
8	Q	Did there come a time when this motorcade
9		MR. MESSINA: Withdrawn.
10	Q	(continuing) When you stopped?
11	A	What was the question?
12	Q	Did there come a time as you were all proceed-
13	ing to Brookl	yn that you stopped for some reason?
14	A	Mr. Brzostowski signaled for us to pull over
15	and we did.	
16	Q	You did?
17	A	Yes.
18	Q	Now, Mr. Brzostowski, did he have a conversation
19	with anyrody	at that point?
20	A	Well, at that time, him and Mr. Caufield were
21	aside from us	and were engaging in a conversation.
22	Q	Were you able to hear what they were saying?
23	A	I surmised
24	Q	I'm not asking you what you surmised. I am
25		did you hear what they were saying?

app 95

1		14.3
2	A	No, I couldn't hear.
3	Q	Now, how long were you stopped, approximately?
4	A	Five to ten minutes.
5	Q	Now, did there come a time by the way, did
6	you ever leav	e your car?
7	A	I think I got out of my car.
8		We pulled over in a diner and I believe I got
9	out of my car	. That's all I did.
10	. Q	Now, did there come a time when you got back
11	into your car	r?
12	A	Yes.
13	Q	And did somebody talk to you and tell you what
14	was happening	g?
15	λ	Mr. Caufield told me that we were heading toward
16	the Washingt	on Bridge.
17	Q	Did he say anything to you about cocaine or
18	anything of t	hat sort?
19	A	Nothing of that nature was mentioned.
20	Q	Did Mr. Brzostowski proceed with you, with you
21	all?	
22	A	Yes, he did.
23	Q	Up to what point?
24	A	Up to a diner at the Washington Bridge.
25	Q	And at that point did you all stop?

25

again?

1	
٠	145
2	A Yes, we did.
3	Q And did Mr. Brzostowski
4	Q And did Mr. Brzostowski, was he proceeding along with you all?
5	
6	A No, he was not. He was staying behind.
	Q Do you know why he was staying behind? Did he
7	ever tell you why he was staying behind?
8	A He never told me, personally.
9	
10	for tell the jury who proceeded into
	Brooklyn at this point?
11	A Mr. Caufield, myself, Miss Lisa and Mrs. Caufield.
12	Now, yourself, Miss Lisa, and Phyllis Caufield
13	were in your car?
14	A Correct.
15	- Collect.
16	Q And Caufield was on his .motorcycle?
	A Correct.
17	Q As you were proceeding into Brooklyn who was
18	leading the way, if you remember?
19	the way, if you remember?
20	A I don't remember.
21	Q Well, do you know where you were going?
	A Mr. Caufield told me we were going to Brooklyn.
22	Q Was he leading the way or were you leading the
23	way?
24	
25	A Apparently he was because I didn't know where we

were going.

# Licursi-direct

1	146
2	Q How long were you on the road at this point
3	before you got to Brooklyn?
4	A Twenty minutes.
5	Q Now, did you eventually get to your destination?
6	A Yes.
7	Q What was your destination, a house or what?
8	A Mrs. Caufield told me to park my car in front
9	of this building and we went up to an apartment house, about
10	a four story apartment house.
11	Q Do you know approximately where in Brooklyn it
12	was?
13	A I have no idea where it was.
14	Q It was dark at that point; correct?
15	A Correct.
16	Q Well, did you eventually what happened after
17	that?
18	A We walked up, I believe, three flights of
19	stairs and we got introduced to a person by the name of Gail
20	and her husband whose name was Danny.
21	Q Were you told what their last names were?
22	A No, I was not.
23	Q Did you see anything that looked like cocaine
24 25	around or pot or anything?
20	A I believe there was pot.

app 99

		Licursi-direct
1		147
2	Q	Who was smoking it?
3	A	No one was smoking it. I thought I saw pot.
4	Q	Was it there when you got there?
5	A	Yes.
6	Q	In what form?
7	A	In a plastic bag.
8	Q	Was it sitting there or in somebody's hands or
9	what?	
10	A	I think it was in their living room.
11		
12	Q	In their living room meaning Danny and Gail?
13	A	Right.
14	٥	Did anybody refer to it during that while you
15	were there?	
16	A	No.
17	Q	You don't really know what it was, actually?
18	A	Well, it was something in a bag that looked
19	like oregano	and I assumed it was pot.
20	Q	Did anybody mention to you that it was pot?
21	A	Nobody.
22	9	So, so far as you know, you really don't know
23	what it was?	
24		No.
25	Q	Would that be a fair statement?
	A	Yes.

		Licursi-direct
	1	148
	2	Q You didn't analyze it, did you?
	3	A No, I did not.
r2	4	Q How long were you at Danny and Gail's house?
	5	A I'd say about 45 minutes.
	6   7	Q Were you all together; namely, was Jennifer
	8	Lisa there, yourself, Caufield, Phyllis Caufield his wife
	9	and Danny and Gail?
	10	A When we arrived in Brooklyn Mr. Caufield placed
	11	a phone call and later excused himself and left and myself
	12	and my girlfriend, Jennifer, were sitting in the kitchen with
	13	a two year old child. I believe her name was Erin and
	14	Mrs. Caufield and myself and Danny or, I believe, just Gail
	15	was there. We were engaging in conversation.
	16	Q Were they talking about drugs?
	17	A I don't know. I wasn't in the same room.
	18	Q Will you describe the apartment as best you can
	19	for the jury, as best you can recall it.
	20	A About a five room apartment.
	21	It had a bedroom two bedrooms, livingroom,
	22	dining room and kitchen area. It was three floors up. That's
	23	the best I can remember it.
	24	Q Now, you say that Mr. Caufield made a telephone
	25	call?

Yes.

## Licursi-direct 1 149 2 Do you know who he made that call to? Q 3 I believe it was to Mr. Corr. How do you know that? Did he use the word 0 5 "Corr"? 6 I heard him say "Hello, Dave." The telephone is in the kitchen area where 8 Jennifer and myself were. 9 Could you hear what Caufield was saying to Dave? 10 Well, I just remember him saying "I'll be right 11 That's the only thing I remember him saying. over." 12 That's what Caufield said, "I'll be right over"? Q 13 A Right. 14 Did Caufield leave? Q 15 Yes, he did. 16 Did Caufield eventually come back? 17 Yes, he did. A 18 Did he make any other telephone calls as far as 19 you know? 20

A Not as far as I know.

Q Did you hear Mr. Caufield use the word "coke" or "cocaine" or anything of that sort?

A I don't remember.

21

22

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Q So, did you hear Danny or Gail use the word "coke" or "cocaine" during that period of time?

1		150
2	λ	No.
3	Q	Did you, Phyllis or Miss Lisa use the word
4	"coke" or "co	caine" during the period of time you were in the
5	apartment?	
6	A	No.
7	Q	So, what did you all do for 45 minutes?
8	A	We were just talking. We were introduced
9	Q	Youdid say 45 minutes that you were approx-
10	imately there	?
11	A	Yes.
12	Q	What did you do?
13	λ	Social talk.
14	Q	What were you talking about?
15	A	After the introductions this was the first
16	time we met D	eanny or Gail we asked what they did for a
17	living and th	ey asked us what we did for a living.
18		It was just general conversation.
19	Q	Did you have any booze?
20	Α	No.
21	Q	Soda, anything of that sort?
22	A	No.
23	Q	Did David Corr present himself at some point?
24	A	After Mr. Caufield came back Mr. Corr came after
-		

him.

# Licursi-direct

1		151
2	Q	Were you introduced to Mr. Corr?
3	A	Yes.
4	Q	Did Mr. Corr during that time that he was there
5	with all of yo	ou, did Mr. Corr use the word "coke" or "cocaine"
6	A	I believe so.
7	Q	In what connection?
8	A	T believe he was talking to Mr. Caufield about
9	it.	
10	Q	Were you able to hear what he was talking to
11	Caufield about	:7
12	A	No, I wasn't.
13	Q	Did Mr. Corr produce anything or any substance
14	which looked	like cocaine or coke or any other narcotic drug
15	in your presen	nce?
16	A	I don't believe so.
17	Q	Did Corr produce anything which looked like
18	cocaine or co	ke?
19	Α	No.
20	Q	I mean, you do remember that, don't you?
21	A	Yes.
22	7 0	And you certainly would remember if Corr pro-
23	duced somethi	ng which looked like cocaine, wouldn't you?
24	A	Well, yes I would.
25		So, did that meeting well, did anybody hand

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you anything which looked like cocaine or coke during that 45 minute get-together?

A No.

Now, how many telephone calls did Caufield make or receive during that 45 mi. ute interval as far as you know?

A Well, at one point Mr. Brzostowski called --

Q How do you know it was Brzostowski?

A I heard Mr. Caufield "Hello, Joe."

Q It could have been someone else?

A Correct.

You don't know that it was Mr. Brzostowski?

A Well, subsequently I spoke to Mr. Brzostowski.

Q Oh, you did?

A Yes.

Q And what was the content of that conversation?

What did you say to him and what did he say to you?

A Well, Mr. Caufield slammed the phone down and asked me -- well, Mr. Brzostowski was just hanging on the other end of the line. So, I picked up the phone and Mr. Brzostowski said "What's going on over there, Frank?"

Q Well, if he slammed down the phone --

A He didn't slam it down on the receiver -- on the counter.

Q Oh.

Sp 105

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He asked me what was going on. So, I stated that "Everybody here is paranoid."

- Q What did you mean by that?
- Everybody was nervous.
- About what?
- About what was going on.
- What was going on?
- The dealings with Mr. Caufield and Mr. Brzostowski.

153

- Did you know specifically what was going on between Caufield and Agent Brzostowski?
  - Specifically, no.
- Well, was that the extent of your conversation with Agent Brzostowski?
  - It's the last time I spoke to him.
- So, as far as you know, that is the extent of the conversation which either you or Caufield had with anybody that night except the call that he made to David Corr?
  - Correct.

The last time I spoke to Mr. Brzostowski I was under the understanding that Mr. Caufield and Mr. Brzostowski were making their own arrangement. That's what Mr. Brzostowski had said -- for Mr. Caufield to call him.

- And, did that meeting eventually break up?
- Yes, it did.

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How did it break up? Who left first?

A Myself and Jennifer. It was getting late. It was around 11 o'clock. I had to go to work the next day.

So, we decided to leave.

- Q So, who left first?
- A Jennifer and myself.
- Q And you eventually went back to New Jersey, to your apartment in New Jersey?
  - A Right.
- Now, did you have any communication with either Mr. Brzostowski or David Corr or Caufield or Caufield's wife the very ext day? That's the 6th.
  - A No.
- Any communication whatsoever, oral, written, by telephone, by messenger -- by anything?
  - A No.
- What did you do on the 6th? How did you occupy your time on the 6th?
- A I belong to a bowling league and on Monday nights
  I bowl after work.
  - You worked during the day?
  - A Yes.
  - Q And your hours are what?
  - A From eight to three thirty.

	Licursi-direct
1	155
2	Q After 3:30 What did you do?
3	A I went home, showered, ate and went bowling.
4	Q Did you go with anybody?
5	A Well, I belong to a bowling league.
6	Q There were a lot of people around?
7	A Oh, yes.
8	You bowled and what time did you get home?
9	A About 11 o'clock.
10	Q Would it be a fair statement to say that you
11	never left the State of Jersey on May 6th, 1974?
12	A That is correct.
13	Q And you had absolutely no communication with
14	either Agent Brzostowski or Caufield or Corr or anybody else
15	on that day?
16	A That is correct.
17	Q Now, when is the next time would it be another
18	fair statement to say that you never from that time, when you
19	saw Brzostowski on the 5th, that you never had any communica-
20	tion with him until you saw him in court?
21	A Correct.
22	Q A couple of days ago?
23	A Correct.
24	When is the next time you sawwhen was the next

time you saw Caufield or had communication with him after that

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meeting in your apartment on the 5th?

A I saw him at school on Tuesday. That would make it the 7th.

Q Did Mr. Caufield say anything to you at that time about what had transpired on the 5th?

A What had transpired on the 5th?

Q Yes, at your apartment. That's the time before you saw him.

You didn't see him on the 6th, him or Agent

Brzostowski or any of the people I mentioned before on the

6th?

- A Yes; that is correct.
- Q And the next time you saw Caufield as when?
- A Tuesday at school, Tuesday night.
- Q Now, did Caufield say anything to you about meeting at your apartment on the 5th?
  - A No.
  - Or about the subsequent trip to Brooklyn?
  - A No.
  - Q What did you talk about?
- A He told me that him and Mr. Brzostowski settled their deal.
  - Q He said "settled the deal"?
  - A "Their deal."

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deal?

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Did he say anything else that it was a cocaine

No, just that they settled their deal.

Did you pursue it?

No, I did not pursue it.

So that we have it clear and set once and for a 11, have you ever sold or bought cocaine or any other narcotic drug in your whole life?

No.

Have you ever been convicted or arrested for the use of any narcotic substance?

Never.

Have you ever profited one cent in your whole life -- did you do some transactions involving cocaine?

Never.

Have you ever either received money or given money to anybody regarding any transactions regarding drugs in your whole life?

> A No, never.

MR. MESSINA: I have nothing further, your Honor.

THE COURT: All right. We will take a short recess.

(Recess taken)

	Licursi-cross			
1	158			
2	(After recess)			
3	THE COURT: All right. Bring the jury			
4	in.			
5	(Jury entered jury box at 12:25 p.m.)			
6	FRANK LICURSI, having been			
7	previously duly sworn by the Clerk of the Court			
8	resumed the witness stand and further testified			
9	as follows:			
10	CROSS EXAMINATION			
11	BY MR. SCOTTI:			
13	Q Mr. Licursi, you told us that you have known an			
14	individual by the name of John DiJanni for approximately a			
15	year; is that correct?			
16	a Correct.			
17	Q Did you socialize with Mr. DiJanni?			
18	A A couple of times.			
19	Q How many times?			
20	A Approximately three times.			
21	Q And how did you socialize with him?			
22	A Well, one time we met a concert. That was the			
23	last time I socialized with him.			
24	The time previous to that I believe			
25	Q Did you go to the concert together?			

No, we met there. It was half-time -- not half-

CPP 111

1	159
2	time it was intermission time. We were at the concession
3	stand. I was with my girlfriend and I believe he was with
4	his and we exchanged greetings and went back to our seats.
5	The first time I met him was at my girlfriend's
6	house. They were playing cards and I was there and I met him
7	there.
8	Q Did you have mutual friends?
9	A Yes.
10	Q People who knew you and him?
11	A Yes.
12	Q About how many mutual friends do you have?
13	A Well, as I stated, I only knew Mr. DiJanni
14	approximately a year.
15	He knew a couple of my friends. I don't know
16	how many. I don't know his background that well.
17	Q I wash't asking about the background but mutual
18	friends. Three, four, five, ten?
19	A Maybe two or three.
20	Q Prior to the phone call you say you received
21 22	from Mr. DiJanni, did you ever discuss narcotics with Mr.
	DiJanni?
23	A No.
25	Q Did you ever use narcotics with Mr. DiJanni?
20	A Yes. U have.

CPP 112

- 1		
		160
2	, ο	What kind of narcotics did you use with Mr.
3	DiJanni?	
4	A	One time Mr. DiJanni was coming over for insur-
5	ance policy p	ourposes and he came over with a white substance
6		me was cocaine and asked if I wanted to try it.
7	So, I did.	
8	Q	You tried the cocaine?
9	Α	Yes.
10	Q	Did you ever buy cocaine from Mr. DiJanni?
11	A	Mo.
12	Q	Did you ever give cocaine to anyone else to
13	try?	
14	A	No, I have not.
15	Q	Did you ever give it to your girlfriend, Jenni-
16	fer, Jennifer	
17	Α	That day that Mr. DiJanni came over.
18	· Q	Did you pay Mr. DiJanni for the cocaine?
19	A	No, I did not.
20	Q	What did you do with the cocaine?
21	Α	We sniffed it, snorted it.
22	Q	So, you received cocaine?
23	A	Yes, I have.
24	Q	And you have used cocaine?
25	A	I used it just that one time.

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Didn't you consider that when you answered your lawyer's question a little while ago when he asked if you ever bought or sold cocaine in your entire life?

MR. MESSINA: Objection.

I think the witness heard the question and responded and see no discrepancy.

You see a distinction between buying and selling and using it for yourself? You see a distinction bet sen buying and selling and receiving and using cocaine?

MR. MESSINA: Objection.

THE COURT: I'll allow it.

Do I see the difference?

Q Let me rephrase the question.

Do you see a difference between buying and selling cocaine and receiving cocaine from somebody and then taking part of that cocaine and giving it to somebody else to use?

MR. MESSINA: Objection. I think it calls for a legal conclusion.

MR. SCOTTI: It is not a legal conclusion.

THE COURT: I think the question is bad.

I have to agree with him. The question is bad.

You received cocaine; is that correct?

A From Mr. DiJanni.

Q Right.

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Then, you distributed a part of that cocaine to your girlfriend.

No. Mr. DiJanni gave it to my girlfriend.

Didn't you just testify that you gave it to your girlfriend?

Mr. DiJanni and I were in my apartment. My girlfriend, myself and Mr. DiJanni were in my apartment and he brought out this substance for myself and my girlfriend to try7-Mr. DiJanni.

- You knew it was cocaine?
- He told me that it was.
- Did you ever tell Mr. DiJanni that could get cocaine?
  - No, I didn't.
  - You never did?
  - Never.
- Did you discuss cocaine with Mr. DiJanni after the time he came over to the apertment?
  - No. I did not, only the phone call conversation.
- Did you discuss cocaine with Mr. DiJanni before he came over to your apartment with cocaine?
- There was no reason to. I had no intention to socialize with Mr. DiJanni at that time.
  - He just cameout of the blue and gave you cocaine?

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MR. MESSINA: Objection to "Out of the blue."

163

THE COURT: Yes.

Q He just came to your apartment and offered you cocaine without prior discussion?

A Correct.

Never had a discussion with him, "You want to try cocaine? Yeah, I'd like to try it some time"?

A No, he just brought it over.

Q Ever discuss it with your girlfriend?

A No, I didn't.

Now, there came a time when Mr. DiJanni called you; is that correct?

A Correct.

Q He asked you if you knew anybody who had or if you had cocaine?

A Correct.

Q And he told you that he had a friend that wanted to buy cocaine; is that correct?

A That is correct.

Q What did you say?

A I told him that "I don't deal in coke."

I had no connection or whatever it was that he was after.

1	164
2	Q Did you tell him you'd look around?
3	A No.
4	Q Try to find somebody?
5	A No.
6	Q Then, you were talking to a friend of yours,
7	Gene Caufield; correct?
8	A Yes.
9	Q About cocaine
10	MR. MESSINA: Objection. I don't think
11	that's the testimony.
12	THE COURT: I think he is asking him a
13	question.
14	A Could you repeat the question?
15	Q Did you subsequently speak to Gene Caufield
16	about cocaine?
17	A Gene Caufield spoke to me.
18	Q What did he tell you?
19	A That hewas able to get coke.
20	Q Had you been talking to him about coke?
21	A No.
22	Q Did anyone else ever come to you and say they
23	could get coke?
24   25	A I didn't know anybody else who was like that,
	who was able to get coke.

1	165
2	Q Just Gene?
3	A Just Gene.
4	Q What did you say to Gene Caufield when he told
5	you he could get cocaine?
6	A I wasn't interested.
7	Q Did you say "Why are you telling me about this?"
8	A There was no reason. He didn't come over angril
9	and tell me he could get cocaine. He just told me in a con-
10	versation that he could get it.
11	Q And you never asked him about cocaine before
12	that?
13	A Oh, no.
14	Q Well, did you tell Mr. DiJanni that Gene Caufiel
15	said he could get cocaine?
16	A Mr. DiJanni called me back and asked me if I
17	was able to get it and after speaking with Mr. Caufield I told
18	him I was able to get the coke:
19	Q He, Mr. DiJanni, asked you to get coke?
20	A Yes.
21	Q And then you told him you could get it?
22	A No. I told him I spoke to Mr. Caufield and he
23	was able to get it.
24	Q Mr. Caufield was able to get it?
25	A Pight

cpp 118

1		
2	Q	How soon af
3	sation with	Mr. DiJanni w
4	did you cal	l him back and
5	I'm sorry -	- talk to him
6	A	Mr. DiJanni
7	Q	Yes.
8	А	About two da
9	Q	Two days lat
0	A	Yes.
1	Q	So that rou
2	on let's sa	y, day one.
3	λ	Right.
4	Q	Is that righ
5	A	Right.
6	Q	And then, or
7	Gene Caufie	14?
8	A	Corract.
19	Q	And on that
20	another con	versation with
21	that Mr. Ca	ufield had coca
22	A	That is cor

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ter you had had your initial converhen Mr. DiJanni asked you for cocaine tel: him about Gene Caufield or -on the phone about Gene Caufield? ays. ter? had a conversation with Mr. DiJanni nt? day two, you had a conversation with second day or on day thren, you had Mr. DiJanni advising Mr. DiJanni ine; is that right? cect. Well, on this second conversation you had with Q

did you make arrangemen's to have a meeting?

Mr. DiJanni when you told him that Gene Caufield had cocaine,

- 11	
1	167
2	A Well, as I stated previously I'm not sure who
3	exactly said to come over to my house but subsequently, Mr.
4	DiJanni and I did decide they would meet over my place.
5	Q This was a conversation between you and DiJanni
6	alone?
7	A Right.
8	Q On the phone?
9	A Right.
10	Q And you don't remember whether you said "Come
11	over" or Mr. DiJanni said "Why don't we come over"?
12	A No.
13	Q But there was no problem about meeting
14	MR. MESSINA: Objection.
15	THE COURT: Sustained.
16	Q There was no reason you didn't want Mr. DiJanni
17	to come over, was there?
18	A No.
19	Q And you knew when Mr. DiJanni came over to your
20	apartment he was going to bring his friend, right?
21	A Correct.
22	Q What did he tell you that Friend wanted to do?
23	A He told me that his friend was interested in
24	buying coke.
25	Q What does "coke" mean?

000 120

1	168
2	A What does it mean? I don't know. It can mean
3	a number of things.
4	Q Oh yeah? What?
5	A Coca-Cola, cocaine, a controlled substance.
6	Q What did you think he meant?
7	A That it was a controlled substance.
8	Q A narcotic, cocaine?
9	A Right.
10	Q That's what you understand when somebody is
11	talking about "coke"?
12	A Not all the time.
13	Q But in this instance itwas cocaine?
14	A Correct.
15	MR. MESSINA: I object.
16	In what instance was it cocaine?
17	MR. SCOTTI: In the instance we are talking
18	about to which the witness just testified and about
19	which I am asking questions on cross examination
20	as to what he has already testified to for about
21	45 minutes.
22	Q There's no question you were talking about
23	cocaine?
24	A Correct.
25	O Mitter way had the county commenced to the county

app (2)

1		169		
2	DiJanni when	you talked about coming over to your apartment		
3	you then called Gene Caufield; right?			
4	X	No. I didn't speak to Mr. Caufield on the phone		
5	I seenhim at	school.		
6	Q	And did you tell him about this meeting at your		
7	apartment?			
8	A	Did I tell him about the meeting I was going		
9	to have?			
10	Q	Yes.		
11	λ	Yes, I did.		
12	Q	That would be on the 5th of May, Sunday?		
13	A	Yes.		
14	Q	What did you tell him?		
15	A	That Mr. DiJanni had a friend interested in		
16	buying coke	and he told me to get them together. He wanted		
17	to get them	together Mr. Caufield.		
18	Q	Mr. Caufield told you he wanted to get together		
19	with Mr. Dij	anni's friend?		
20	A	Right.		
21	Q	What else did he say?		
22	A	That was it.		
23	Q	What did you say?		
24		"Fine "		

Did you invite him over to your apartment to

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meet --

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A Well, I told him that Mr. DiJanni and his friend were coming over on Sunday.

So, it would be a fair statement to say, would it not, that the reason why Mr. Caufield and Mr. DiJanni were coming over to your apartment was so that Mr. DiJanni's friend could meet Mr. Caufield?

A Well, Mr. Caufield was coming over to my house that Sunday anyway.

Q Oh, he was?

A Yes, he was.

Q How did that come about?

A Well, we visit each other.

Q How did it come about that he was going to come to your house, anyway?

A He was coming over that Sunday.

Had you made prior arrangements?

A Yes.

Q How long ago had you made these arrangements for Mr. Caufield to come over?

A A week.

Q A week before?

A Yes.

Q Was that before you had the conversation with

1	171
2	Mr. DiJanni the first time?
3	A I believe so.
4	Q So, that once you knew that Gene Caufield had
5	cocaine and was coming over to your house
6	A I didn't know that Gene Caufield
7	MR. MESSINA: Objection.
8	I don't think there is any testimony
9	that he knew that Gene Caufield had cocaine.
10	THE COURT: What is the answer?
11	A (continuing) I didn't know that Gene Caufield
12	had cocaine.
13	He said he knew somebody who had cocaine.
14	Q I'm sorry. I'll rephrase the question.
15	So, after you knew Gene Caufield was coming over-
16	MR. SCOTTI: Strike the question.
17	Q You had the meeting on May 5, right?
18	A Yes.
19	Q Mr. Caufield was there?
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23	
24	A Correct.
95	Q By the way, did Mr. DiJanni know Mr. Caufield?

No, he didn't.

	Licursi-cross ,
1	172
2	You met Agent Brzostowski; is that right?
3	A That's right.
4	Q Who introduced you to Agent Brzostowski?
5	A Mr. DiJanni.
6	Q And then you introduced Agent Brzostowski to
7	Gene Caufield; is that right?
8	A Then we went upstairs to my apartment.
9	We got introduced downstairs and it was a general
10	introduction to Gene and "Gene, this is John" and then just
11	everybody was shaking hands.
12	Q But, you were doing the introducing because
13	you were in the middle?
14	A I introduced Mr. Caufield to Mr. DiJanni and
15	after that first introduction everybody shook hands, not
16	knowing that was Agent Brzostowski.
17	Q Didn't you introduce Mr. DiJanni's friend to
18	Gene?
19	A Gene already had his hand out to shake hands
20	with Mr. Brzostowski.
21	Q Do you remember what Agent Brzostowski said when
22	he got into your apartment?
23	A I believe he asked me if the girls were part
24	if everybody was part of the deal.
25	O And that was referring to the cocrine deal.

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2	right?

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- - Q What did you say?

Yes.

- A I told him "Well, this is husband and wife and girlfriend and boyfriend. Everybody knows what's going on."
  - Q Everybody knew what was going on?
  - A Right.
- © Everybody there knew that Joe DiJanni -- excuse me -- John DiJanni was bringing Joe Brzostowski to meet Gene Caufield at your apartment for a narcotic deal?
- A No. They knew they were coming over to meet.

  There wasn't going to be a transaction.
  - Q There wasn't going to be a transaction?
  - A Not in New Jersey that I know of.
  - Q You didn't?
  - A No.
- Q What did you think they would do, just discuss the transaction?
  - A They were going to meet each other.
- Q For the purposes of engaging in a narcotics transaction?
  - A That was their business.
  - Q After you introduced them you didn't want to

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	Licursi-cross
1	174
2	know what they were doing?
3	A Correct.
4	MR. MESSINA: Objection.
5	I think the question has been asked
6	and answered.
7	THE COURT: He has answered it.
8	Go ahead.
9	Q Do you remember having a conversation with Mr.
10	Brzostowski at your apartment?
11	A No, I don't.
12	Q Do you remember talking about cocaine with
13	Agent Brzostowski?
14	A No, I don't.
15	Q Do you remember telling Agent Brzostowski that
16	the quality of the cocaine he would buy would be very good?
17	A No, I don't. There was no reason for me to
18	say that.
19	Q That's not what I asked you
20	A No, I didn't say that.
21	Q Do you remember telling Agent Brzoscowski
22	would be able to cut the cocaine?
23	A No, I do not.
2	Q Is it that you didn't say it or you don't

remember saying it?

A I didn't say it.

3

You never said it?

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A I never said it.

5

Q I believe you testified on direct examination that prior to the actual meeting ir your apartment on May 5th you talked to Gene Carfield?

7

A Correct.

8

Q And Caufield said to you "What's going on?

10

What's happening?"

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A I don't remember that.

12

you don't remember testifying to that?

13

Mr. Caufield said that?

14

Yes.

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A At me -- no, I don't remember saying that. I

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said that day?

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Q Right.

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A Under what question was that?

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I don't remember the question --

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MR. MESSINA: Objection.

21

If he doesn't remember, he doesn't

22

remember.

Brzostowski?

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Q Isn't it a fact that Mr. Caufield was calling you to find out about the progress of the meeting with Agent

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A No, he was not.

Isn't that what he meant by saying "What's happening? Am I going to meet this guy who wants to buy?"

Never said that.

Now, you said that the meeting at your apartment Q lasted about 20 minutes?

Correct.

Well, the purpose of this meeting was so that Agent Brzostowski could meet Gene Caufield; is that right?

Yes.

And no other reason?

No other reason.

Now, there came a time when you left the apartment; is that right?

That's right.

And you went to Brooklyn?

Right.

Weren't you going to Brooklyn because that's where the cocaine was?

> That's not why I was going to Brooklyn. A

> Is that why Gene was going to Brooklyn? Q

Correct.

Is that why Joe Brzostowski was going to Brooklyn?

Yes.

		Licursi-cross
1	4	177
2	0	To get the cocaine?
3	A	Yes.
4	Q	You knew that, didn't you?
5	A	Yes.
6	Q	And you were going along, right?
7	λ	I was taking Mr. Caufield's wife, Phyllis, along
8 9	Q	You had a conversation with Agent Brzostowski
10	later on that	night on the telephone from Brooklyn?
11	A	Correct.
12	Q	Is that where you were, in Brooklyn?
	λ	Correct.
13	Q	I believe you testified that Caufield was there,
14	David Corr, y	ourself?
15	A	Yes.
16	Q	Was David Corr the man who was going to give the
17	cocaine to Ca	ufield?
18	A	I believe so.
19	٥	You knew that, right?
20	A	No, I didn't.
22	Q	You didn't know what David Corr was doing there?
23	Α	The first time I ever met David Corr.
	Q	Didn't Caufield cell you David Corr was the man
24	who was going	to give him the cocaine?
20	A	No, he didn't.

		- C1088
1	440	178
2	Q We	re you introduced to David Corr?
3		s, I was.
4	Q You	n had no knowledge of what David Corr was
5	doing there?	
6	A No.	I didn't have any knowledge.
7		ll, hen Agent Brzostowski called up you testi
8		the phone down on the table, I presume;
9	right?	
10	A Ric	ht.
11	Q Was	he angry?
12		, hewas.
13		he tell you why he was angry?
14	A No.	
15		he tell you "You talk to him"?
16		
17		as just standing there. I was the only one and I picked up the phone.
18		
19		t did you say to Agent Brzostowski?
20		asked me what was going on over there and I
21		that everybodywas nervous.
22		you tell him what they were nervous about?
23	A No,	I just told him they were nervous.
24	Q Did	he ask you what they were nervous about?
25	A No.	
	Q Why	was everybody nervous?

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1		179
2	A	They were nervous about this deal.
3	Q	This cocaine deal?
4	A	Right.
5	Q	And you told that to Agent Brzostowski?
6	A	Yes, I did.
7	Q	Didn't you tell Agent Brzostowski that the deal
8	could not go	down in Jersey; it had to go down in Brooklyn
9	because every	body was so nervous?
10	A	I don't know. I might have.
11	Q	Isn't it a fact that you did tell him that and
12	that's why ev	erybody was nervous?
13	A	No.
14	Q	They didn't want to go to Jersey with the cocaine.
15	They wanted h	im to come to Brooklyn for the cocaine?
16	A	I had no idea what was going on.
17	1	The dealwas between Caufield and Agent Brzostowski.
18	I didn't know	what was going on after that.
19	Q	You testified that you were in the apartment in
20	Brooklyn for	45 minutes?
21	A	Right.
22 23	Q	And no drinks were served, not even soda?
24	A	Right.
25	Q	And not even water.
20		Vaa

cpp 13 -

1 180 2 Wasn't the reason that everybody was at that 3 apartment was to get the cocaine to deliver to Agent Brzostow-4 ski but they didn't know he was an agent at that time? 5 Other than myself and Miss Lisa. 6 What was the reason you were there for? Just 7 driving her back? 8 Yes. 9 Wasn't the only problem where the cocaine was 10 going to be delivered, either in Brooklyn or New Jersey? 11 I had no idea. 12 But you knew everybody was nervous about it? 13 Oh, yeah. 14 I believe you testified that while you were in 15 the apartment in Brooklyn you thought you saw or saw something 16 what you thought to be pot; right? 17 Right. 18 What is pot? 19 I don't know the legal or the physical terminology 20 of the word "pot." 21 I mean, it is a substance that people smoke to 22 get high. 23 Is that called marijuana? 24 Right. 25 Q Have you ever heard the word "marijuana"?

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1			181
2	A	Yes.	
3	Q	Had you ever used marijuana?	
4	A	Yes.	
5	Q	On several occasions?	
6	А	Yes.	
7	Q	Would you say you frequently use marijuan	na?
8	A	No.	
9	Q	Your friends use marijuana?	
10	A	Some of them.	
11	Q	Your girlfriend use marijuana?	
12	A	No, she doesn't.	
13	Q	Ever offer it to your girlfriend?	
14	A	No.	
15		MR. MESSINA: I object to this line	
16	of	questioning.	
17		THE COURT: Yes.	
18		We are going to recess in a few seconds.	
19		Are you almost finished?	
20		MR. SCOTTI: I have a little more, your	
21	Ho	nor.	
22		THE COURT: All right. We will take our	
23	lw	ncheon recess now.	
24		Be back at 2:15.	

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(Jury excused at one o'clock p.m.)

182
MR. SCCTTI: Two fifteen your Honor
or two o'clock?
THE COURT: Well, we have another jury
we have to pick.
MR. SCOTTI: I won't be too much longer
but more than two or three minutes.
THE COURT: If you had said five minutes
I might have let you go.
MR. SCOTTI: It's nothing I can pinpoint
and I didn't want to mislead you.
MR. MESSINA: Are you calling anybody else
or going right into summation?
MR. SCOTTI: I can't tell you that.
MR. MESSINA: You can't tell me.
(Luncheon recess taken)
(After luncheon recess)
(Jury entered jury box)
FR.NK LICURSI, having been
previously duly sworn by the Clerk of the Court
resumed the witness stand and further testified
as follows:
CROSS EXAMINATION
BY MR. SCOTTI CONTINUING:
Q Now Mr. Licursi, we left off before we went to

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		Dicular-Clobs		
1	•	_183		
2	lunch and you	were telling us about the telephone conversation		
3	you had with	Agent Brzostowski?		
4	A	Correct.		
5	Q	After you completed your telephone conversation		
6	with Agent Br	zostowski did Gene Caufield get back on the phone		
7	A	I don't think so.		
8	Q	Did you hang up the phone?		
9	А	Yes, I did.		
0	Q	Did you tell Agent Brzostowski or Joe, as you		
1	knew him then, to get in contact with Gene Caufield?			
2	A	No, I didn't.		
3	Q	Did Gene Caufield tell you he was going to get		
5	in contact with Agent Brzostowski?			
6	A	No, he didnt.		
7	Q	Did you know that they were going to be in con-		
8	tact with eac	th other the next day?		
9	A	No, I didn't.		
20	Q	I believe you testified on direct examination		
21	that Gene Cau	afield and the person you knew as Joe were going		
22	to have to ma	ke their arrangements?		
23	A	Right.		
24	Q	Is that right?		
25	A	Correct.		
	Q	That was for the next day; correct?		

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1	•	184	
2	A	I didn't know.	+
3	Q	It was for some time in the future?	
4	λ	I assumed.	
5	Q	How did you know that Caufield and the person	n
6	you knew as J	oe were going to make those arrangements?	
7	λ	I didn't know.	
8	. 0	I believe you just testified that you knew th	hat
9	Caufield and	Brzostowski were going to make their arrangement	ents -
10		MR. MESSINA: Objection.	
11		I believe the testimony is that he assumed	
12	it.		
13		MR. SCOTTI: No, that's not what he	
14	assume	d.	
15		THE COURT: Don't argue. Just ask the	
16	next q	uestion.	
17	Q	Is it your testimony that Caufield was to mee	et
18	Brzostowski?		
19	A	When?	
20	. Q	After your telephone conversation with Brzos	towski
21	A	Yes.	
22	Q	All right.	
23		And that was regarding the cocaine; correct:	3
24	A	Correct.	
25	5	Now, you testified you went to work and you	went

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1		185
2	bowling on Mo	nday the 6th; is that right?
3	A	That's right.
4	Q	Did you talk to John DiJanni on the 6th?
5	Α	No, I didn't.
6	Q	Did you talk to him on the 7th?
7	A	No, I didn't.
8	Q	Did you talk to him after the 6th?
9	A	Yes, I did.
10	Q	When was that?
11	A	I don't know exactly what date.
12	Q	A couple of days?
13	A	Yes.
14	Q	Two or three days later, about the 8th or 9th?
15	Α	Maybe later than that.
16	Q	The 10th?
17	λ	Yeah, about that time.
18	Q	Around the 10th?
19	<b>A</b>	Yes.
20	7	A couple of days later, right?
21	A	All right.
22		MR. MESSINA: Objection to that.
23		A couple of days is two and it indicates
24	that i	t is more than two.
25		MR. SCOTTI: Three or four.

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Q Did you talk to him about the cocaine transaction?

A I told him -- I explained to him what happened over my apartment in Brooklyn and that's as much as I knew.

- Q And you talked to Gene Caufield?
- A Yes, I did.
- Q When did you talk to Gene? The next day?
- A No. I seen him at school two nights later.
- Q Well now, you saw Joe on Sunday, right?
- A Right.
- Q Okay.

And, you heard the testimony that the cocaine was sold to Joe on Monday, the next day? You heard that sitting in court, right?

A Right.

Q And you have testified that you met or went to school on Tuesday and Thursday?

- A Right.
- Q And that Caufield went to school with you?
- A Right.
- Q So, did you meet Caufield the next Tuesday?
- A Yes.
- The day after the sale?
- A Right.

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Q And Caufield told you that he had sold the cocaine to Joe; isn't \*\* at right?

MR. MESSINA: I object to the word "cocaine." I don't think we have identified the cocaine.

THE COURT: Yes. I will sustain that.

- Q Did you testify on direct examination that Gene told you that the deal went down or the deal went through or something like that?
  - A Yes.
  - Q What did he say?
- A He told me that him and Mr. Brzostowski made their deal, their arrangement.
  - Q Okay.

You knew what hewas talking about, didn't you?

- A He told me they made the arrangements. I assumed it was for what transpired at my apartment.
  - I hat was for the sale of cocaine; correct?
  - A Correct.
- Q So, on Tuesday you knew that on the day before (aufield had sold cocaine to Joeseph --

MR. MESSINA: Objection again to the use of the word "cocaine." We have not identified cocaine.

I don't remember.

Joe's telephone number?

app 'Y'

Licursi-cross 1 189 2 MR. NESSINA: Objection. Asked and 3 answered. 4 He said he didn't know. 5 Did you tell Mr. DiJanni that you wanted to get Q 6 in contact with Joe? 7 No. 8 Did you tell Mr. DiJanni that you wanted to get 9 some cocaine from Joe --10 No --11 (continuing) -- Because after all, you set up 12 the deal? 13 No. 14 You never said that to Mr. DiJanni? 15 No. 16 But you told Mr. DiJanni what had transpired? 17 Yes. 18 MR. SCOTTI: I have no further questions. 19 RE-DIRECT EXAMINATION 20 BY MR. MESSINA: 21 Mr. Licursi, I believe it is your testimony that 22 on one occasion prior to the meeting of May 5th at your apart-23 ment, John DiJanni had supplied you with some cocaine; is that 24 correct?

A That is correct.

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## Licursi-redirect

		Licursi-redirect
1		190
2	Q	Did you I think your testimony is that he
3	brought it to	your apartment?
4	Α.	That is correct.
5	Q	And that your girlfriend, Jennifer, was present
6	at that occasion?	
7	· <b>A</b>	That is correct.
8	Q	Was that a small quantity?
9	A	Yes.
10	Q	Could you describe
11	A	It was a small mound, maybe half inch high.
12	Q	Now, did Mr. DiJanni tell you that that was
13	cocaine?	
14	A	Yes, he did.
15	Q	He brought it with him; is that correct?
16	A	That is correct.
17	Q	Did you pay him any money for that cocaine?
18	A	No, I didn't.
19	Q	What was the intention of bringing the cocaine
20		MR. SCOTTI: Objection.
21		THE COURT: Sustained.
22		You are going back over the same thing.
23		MR. MESSINA: I will withdraw the question,
24	your H	9
25	Q	So, did you ever supply Mr. DiJanni with any drug

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of any sort?

A No, I didn't -- never.

So, it is your testimony that Mr. DiJanni supplied you with cocaine and then subsequently he made a telephone conversation to you in which he requested that you supply drugs to somebody else, a friend of his?

A That's right.

Q Did Mr. DiJanni --

MR. MESSINA: Strike that.

Q Did you ever tell Mr. DiJanni that you could get drugs for him or anybody else?

A Prior to the 5th?

Yes.

A No.

MR. SCOTTI: Your Honor --

THE COURT: We have been all over this.

This is rehashing the hash.

MR. SCOTTI: I don't like to interrupt answers but we have been all over this before. I don't see the purpose.

MR. MESSINA: I have no further questions.

THE COURT: All right.

Step down.

Any other witnesses?

Defendant rests?

MR. MESSINA: Yes, the defendant rests.

THE COURT: All right. Take the jury out for a moment.

(Jury excused)

(Jury not present)

THE COURT: All right.

MR. MESSINA: At this time, your Honor, the defendant makes a motion for a directed verdict of not guilty based on the fact that the Government has not proved its case beyond a reasonable doubt.

THE COURT: No.

The Court feels that under the section of aider and abettor of Section 2 of the United States Code, there is sufficient facts for it to go to the jury at this stage.

MR. SCOTTI: I think perhaps Mr. Messina misspoke when he said we have mot proved it beyond a reasonable doubt. I think he means the Government has not proved a prima facie case.

MR. MESSINA: Right.

THE COURT: We have another item as to entrapment, as to whether or not you are entitled

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to a charge of entrapment.

It doesn't seem to come within the essentials requiring such a charge.

The mere fact that someone called him on the phone and asked him a question and he became an accomodating individual by answering them and then doing something else, it doesn't come within the rule that number one, they tried to force him or cause him todo something that he ordinarily would not have done because there is no showing of that in the facts themselves.

So, I think the question of entrapment is not before the jury.

The only question before the jury, it appears to me, is whether he acted as an aider and abettor on the basis of whether or not the delivery was within his control or there was constructive delivery and his acts prior to delivery.

MR. MESSINA: May I simply state for the record that the basis which we say is grounds for a charge of entrapment is that the Government, acting through an informer, without any prior indication that Mr. Licursi was a

trafficer in drugs or had really any source of supply --

THE COURT: That may be if the informant testified on the side of the Government's case.

But, we really don't know what effect, if any, the informer had on the prior proceedings except by inference.

MR. SCOTTI: The record should reflect that the defendant was going to call the informer and then declined to do so.

THE COURT: That wouldn't change the interence.

MR. MESSINA: The second question is the predisposition on the part of a defendant to involve himself in a crime involving narcotics and I don't think there is a predisposition.

THE COURT: I think he took it out of
the predisposition with the statement "Well,
I don't know anything about it but Caufield does."

That was his suggestion, not the informer.

You see, if he suggested to him "You speak to Caufield" that's different and would come under entrapment. But, there is no such suggestion.

Actually, the question of entrapment was doubtful in my mind since the beginning though I wouldn't foreclose you from proving it if you could. But, I don't think prima facie, you have come forward with an entrapment defense in this case.

The most you have here is an accommodator who said "Yeah, speak to so and so."

MR. MESSINA: I respectfully take exception to your charge.

THE COURT: All right. O f course.

Now, I have another matter that has been distrubing me somewhat. It is not too usual when a person is charged with aiding and abetting rather than a conspiracy.

In a conspiracy it doesn't matter whether they are present at the time is committed.

The partnership itself in a conspiracy shows intent to have an unlawful agreement or to perform an unlawful act.

I don't know if you have any charge
which you wish to submit to the Court to add to
the charge as to what is means by distribute and
my definition would be that it means to deliver

and deliver means the actual constructive attempt to transfer a controlled substance. That is, the cocaine itself.

The other item is, did he have, at the time, a constructive or actual control over this item to make such a delivery.

Do you have anything you want to add to that? That is the only definition I have.

MR. MESSINA: No. I think that's quite good.

MR. SCOTTI: I would have something to say about that.

THE COURT: I am just reading the definition.

MR. MESSINA: I think one of the problems
here is that there has not been any real — to
my mind — that Mr. Licursi had actual possession,
actual knowledge or constructive knowledge or
constructive possession of this cocaine and,
as a matter of fact, we are not even sure which
cocaine we are talking about.

That's the problem.

It comes under the aiding and abetting section of the delivery. That's where your problem

is.

Think about it.

Do you have anything to say about that?

MR. SCOTTI: Yes.

I just wanted to bring to your Honor's attention some cases on entrapment which take the view that the test for the defense of entrapment is that the defense must show, has the burden initially to show, that the defendant was introduced and entrapped and that the testimony is "some evidence" and I would submit there wasn't any element of "some evidence" shown.

THE COURT: I say, there has not been shown in this case inducement or predisposition.

MR. MESSINA: It is the defendant's burden to go forward but once that is done it is the Government's burden to show predisposition.

MR. SCOTTI: But the evidence doesn't show that.

THE COURT: Yes. That's what I'm saying.
The evidence doesn't show that.

Take a brief moment to look the charge over and I will resume the bench in five minutes.

(Recess taken)

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(After recess)

(Jury not present)

THE COURT: All right. Are we ready?

MR. SCOTTI: I have seen the charge,
Judge and it's fine.

MR. MESSINA: Your Honor, I simply request that the charge which I put in be accepted and read.

THE COURT: You mean the entrapment?

MR. MESSINA: The entrapment and the other charges.

Your Honor, it is my understanding that if I don't --

THE COURT: They're all in there. Let's do it right.

MR. MESSINA: I would request that your Honor read the charge as proposed.

MR. SCOTTI: I think that encompasses everything that Mr. Messina asked for.

THE COURT: Yes.

Number one is included in my charge.

MR. MESSINA: Specific intent is important.

MR. SCOTTI: That's included in the charge.

MR. MESSINA: Oh, yes.

THE COURT: Number two is already in the charge. That's going to be charged.

MR. MESSINA: Number three?

MR. SCOTTI: That's in the charge.

THE COURT: I will charge number four that the jurors must use their own individual --

MR. MESSINA: Thank you.

THE COURT: Oh, yes.

MR. SCOTTI: Well, wait a minute.

THE COURT: No. I will charge number four.

MR. SCOTTI: I believe that this is a little bit confusing, your Honor.

The charge reads "While it is the duty of a juror to discuss and consider the opinions of other jurors he or she must decide the case upon his or her opinion of the evidence and upon his or her judgment of conscience and not" -- your Honor, would you read the last portion, please. That's what I object to. It seems to take away the element of discussing this case with their fellow jurors.

THE COURT: Well, I have it in better language and in stronger language then you do.

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"Now, in this type of case there
must be a unanimous verdict and it becomes
encumbent upon you to listent to one another
in order to determine in good conscience
whether your fellow jurors' argument is one
commensurate with yours or whether you agree
with him in reference to the evidence proffered
before you during the trial.

"You have no right to stubbornly or idly sit by and say 'I am talking to anyone.'"

That's a common sense charge.

They won't understand what you are saying but when I say "don't sit idly by" they will know what I mean.

MR. MESSINA: I believe number four says that "If an individual, upon searching his own conscience feels a certain right, he has a certain right or even a duty" --

THE COURT: We went through that on the jury selection and the Court asked, in the jury selection, "You are juror number 12 and if 11 other jurors came to a firm conclusion would you stick to your opinion?" That shows independence of mind.

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I asked "Would you change just for the sake of changing" and the answer was "No" and I also asked "Would you stick to your own opinion" and the answer was "Yes."

If I charge further it is like saying "We really don't believe you know what you are doing in this case" and I won't belittle their intelligence.

MR. MESSINA: How about number five? THE COURT: That's in the charge on the basis of not convicting a defendant on mere suspicion or conjecture which is better than the language here.

MR. MESSINA: I take exception.

THE COURT: Yes.

MR. MESSINA: Number six, your Honor.

THE COURT: That's already in my charge.

They can draw inference consistent with guilt and consistent with that of innocence. They must take the inference consistent with innocence if both are in balance.

That has been passed on by the Circuit Court of Appeals at least 45 times in the last three years and has never been attacked, always

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approved. So, I will continue to use that.

MR. MESSINA: I take exception to that, your Honor.

How about number seven, your Honor?

THE COURT: No, because number seven

is charging that it is another way of reasonable

doubt and I won't get caught in the semantics

of confusing reasonable doubt.

MR. MESSINA: Exception.

MR. SCOTTI: I think number seven is an incorrect statement of the law.

THE COURT: Yes, it is not correct.

MR. MESSINA: Okay.

Now, number eight.

THE COURT: Well, I have that in there
but it sounds silly because we have had only
one witness on each side of the case except
for the expert. So, I won't include number
eight. It is not a question of more witnesses
on one side than the other. It is equal witnesses in this case.

MR. MESSINA: Right.

THE COURT: You agree with that?

MR. MESSINA: Yes, I do.

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Now, number nine, your Honor.

THE COURT: They have been told that time and time again through selection and they'll be told again about the presumption of innocence in my own words and in my charge I will charge it my way, not yours.

MR. MESSINA: Exception.

THE COURT: Yes.

MR. MESSINA: Number ten, your Honor?

THE COURT: What else?

MR. SCOTTI: Number ten and the Government would object to Number ten, your Honor.

THE COURT: Again, number ten is not applicable for the reason we have had only one witness on each side of the case and they are weighing the factual situation involving the defendant and also the eyewitness saying he made the deal for the cocaine.

MR. SCOTTI: The last two lines of number ten --

THE COURT: "If you have a different version by Government witnesses you must accept that most favorable to the defendant."

MR. SCOTTI: That is not the law.

MR. MESSINA: What about the part of ten stating that the jury is to consider the testimony as it stands after cross examination?

THE COURT: They are supposed to determine the witness' testimony after all examinations, direct and cross. That is evidence. I have already gone through it and said that questions are never evidence but the answers to questions are evidence. They have that in the pre-charge.

MR. SCOTTI: Eleven is the entrapment charge.

THE COURT: Yes, and the Court rules

there is no affirmative evidence sufficient

for the Court to charge entrapment in this case

either by way of predisposition or causing inducement to the crime.

MR. SCOTTI: I believe that's it.

I would ask that Mr. Licursi present his copy of the charge or did he give you the copy of the charge and that it be made part of the court file.

THE COURT: We are going to make that a Court exhibit.

MR. SCOTTI: Fine.

THE COURT: How much time to sum up to the jury?

MR. MESSINA: Oh, about 20 minutes.

MR. SCOTTI: The same.

THE COURT: I will advise you at the 15 minute mark and that means you have five minutes.

MR. SCOTTI: I will say give or take, 20 minutes.

THE COURT: The idea is, if you go over the time sometimes you become repetitious and I think you bore the jury more than you influence it.

MR. SCOTTI: I apologize. I have one other thing.

I understand that Mr. Messina has requested that all the names in the indictment be read.

THE COURT: Yes, since they were testified to by the agent on this case.

MR. SCOTTI: I would ask your Monor to caution Mr. Messina not to comment in summation that because everybody else pled guilty and not this defendant, that this defendant is innocent.

THE COURT: Yes. That would be unfair

comment and I'd have to admonish you in front of the jury. I don't want to do that.

THE CLERK: Defendant's request to charge marked Court exhibit number 1.

(So marked)

THE COURT: Bring in the jury.

(jury entered jury box )

THE COURT: The case is complete and the lawyers will now give you their summations and the Court will charge you on the law.

Mr. Messina?

MR. MESSINA: Now, ladies and gentlemen of the jury, we have come to the -- almost the end of the case.

Now, I start -- we each made, Mr. Scotti and myself, made opening statements in which we tried to briefly give you an idea of what was going to transpire.

Now, my client, Frank sicursi has been accused of the crime of aiding and abetting -he along with two other people who shan't name,
who I can't name -- aiding a fourth individual
who I can't name, in knowingly and intentionally
distributing.

THE COURT: Mr. Foreman, ladies and gentlemen of the jury:

We now come to the final stage of the proceedings. The Court will now charge you on the law to be applied to the facts in the case as you find them to be.

As you may recall, I initially gave you a pre-charge as to the manner in which the case would be presented to you. I told you that most of the evidence in the case would come in the form of the testimony of witnesses, and that you were to pay special attention to the manner in which the witnesses testified.

I believe I also instructed you that
you would be the judges of the facts in the
case, that being your sole province; and that
your recollection of the facts after having
heard all of the evidence in the case — the
testimony of witnesses and the documentary
proof — was to control the determination of
the issues.

Likewise, at that time I told you that
I would be the judge of the law. This has not
changed at this stage of the proceedings. I

will not review the facts in this case for you because I'm certain that with summations by the attorneys there is no need for the Court to review the facts. In any event, if you find that there is some fact in the case that you may have forgotten or don't recollect, or you can't agree with each other in your deliberations, you can have it read back from the record, and that will, I am sure, refresh your memory.

In any event, I am the judge of the law.

You must accept what I say to be the law in this
case.

Now, the attorneys have been permitted by the Court and by the rules to make opening statements and summations to you. Under no circumstances are the statements they have made by way of opening or by way of summation to be taken as evidence. However, the Court and the law does permit you to take the arguments that they have proffered before you and weigh those arguments. And, if you agree with what they have said on either side of the case you may use those arguments in your deliberations and

in discussing the case with each other, and try to convince one another as to what the final determination shall be with reference to the deliberations at hand.

If you feel that the arguments are not commensurate with the testimony and the proof in the case, you may disregard them. They are not evidence. You need not weigh them. However, there are times when the arguments of the attorneys give you an insight as to something you may have missed, and you may discuss that portion of it if you so desire.

Now, of course, I also said to you that during the trial the Court will be the judge of the law. Likewise, as to motions which at times we had at a side bar, as you may recall. That was not for the purpose of keeping any of the proof from you, but were matters of law that were discussed between the attorneys and the Court itself and should not have come before you. In any event, if you feel that you have discovered by some stretch of your imagination what this Court thinks as to either some of the testimony or the case itself, you should

remove that from your minds because I

tell you here and now I have come to no

conclusion in this case nor have I indica
ted to you in any way whatsoever what my

feeling is with reference to the facts in

the case or with reference to the guilt or

innocence of the defendants. That is your

province and your job. You should not try to

weigh what you believe the Court's impression

may be.

You must understand that the lawyers
who appear before you are advocates. They
are advocating the best case they can for the
people they represent and they have a right
to exercise as much forcefulness as they desire
in their questioning or otherwise in presenting
their case in an attempt to convince you of the
innocence of their client or on the side of the
Government, of the guilt of the defendant. I
say this because this is all within the framework of the ordinary trial.

Of course you know by this time that this case has come before you by way of an indictment presented by a Grand Jury sitting

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in this Eastern District. That indictment charges the defendant with the count I shall now read to you. Remember, the indictment is merely an accusation, merely a piece of paper.

It is not evidence and is not proof of anything.

This one count indictment reads as follows:

"On or about the 6th day of May, 1974, within the Eastern District of New York the defendant, Eugene Caufield knowingly and intentionally aided and abetted by the defendant Prank Licursi, did knowingly and intentionally distribute approximately 89 grams of cocaine hyrdrochloride, a Schedule II narcotic drug controlled substance in violation of Title 21, United States Code Section 841 (a) (1) and Title 18, United States Code Section 2."

cocaine hydrochloride is a controlled substance and the law states that "it shall be unlawful for any person knowingly or intentionally to distribute or possess with intent to distribute a controlled substance."

Section 2 of Title 18 of the United
States Code reads as follows:

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"(a) Whoever commits an offense against the United States or aids, abets, commands, induces or procures its commission, is punishable as a principal.

"(b) Whoever willfully causes an act
to be done which if directly performed by him
or another would be an offense against the
United States, is punishable as a principal."

ment which the Government must prove beyond a reasonable doubt, or else you must acquit the defendant, are as follows:

First, that the defendant distributed approximately 89 grams of cocaine hydrochloride;

Second, that he understood that the substance he distributed was cocaine hydrochloride or some other illegal drug and

Third, that he understood that he was acting illegally.

The term "distribute" means to deliver.

The term "deliver" means the actual, constructive,

or attempted transfer of a controlled substance.

The indictment charges the defendant with being an aider and abettor and willfully associating

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himself in some way with the criminal venture and willfully participating in it as he would participate in something he wishes to bring about by some act or omission of his to make a criminal venture succeed.

An act or failure to act is willfully done
if done voluntarily and intentionally and with the
specific intent to do something the law forbids or
with the specific intent to fail to do something
the law requires to be done; that is to say, with
bad purpose either to disobey or to disregard the
law.

You cannot find a defendant guilty unless you find beyond a reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons and that the defendant participated in its commission.

Mere knowledge that a crime is being committed is not enough to establish that the defendant committed a crime.

The charge in this indictment requires that the Government prove that the defendant knowingly and intentionally performed the acts in violation of the law.

The Court will define the words "knowingly"

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and "intentionally."

An act is done knowingly if done
voluntarily and intentionally, and not because
of mistake or accident or other innocent reason.

The purpose of adding the word "knowingly"
was to insure that no one would be convicted for
an act done because of mistake, or accident, or
other innocent reason.

As I stated before, the law never imposes upon a defendant in a criminal case the burden of producing any evidence.

The crime charged in this case is a serious one and you should weigh all the evidence carefully.

Specific intent, at the term implies,
means more than the general intent to commit
the act. To establish specific intent, the
Government must prove that the defendant knowingly
did an act which the law forbids, purposely intending to violate the law. Such intent may be determined from all the facts and circumstances surrounding the case.

Intent ordinarily may not be proved directly because no one can know the workings of the human

mind. But, you may infer the defendant's intent from the surrounding circumstances.

You may consider any statement made, and act done by a defendant and all other facts and circumstances in evidence which indicate his state of mind. It is ordinarily reasonable to infer that a person intends the natural and probable consequences of his act knowingly done or knowingly omitted.

Now, there are in any case, and in this one, two types of evidence from which a jury may properly find a defendant guilty of a crime; one is direct evidence such as testimony of an eyewitness, the other is circumstantial evidence which is proof of a chain of facts and circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that before convicting a defendant the jury must be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

I will describe to you a little later on what is meant by "beyond a reasonable doubt."

A defendant is presumed innocent of the crime. Thus, the defendant, although accused, begins

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evidence against him, and the law permits nothing but legal evidence to be presented before a jury to be considered in support of any charge against the accused. So, the presumption of innocence alone is sufficient to acquit a defendant unless you, the jury, are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

It is not required that the Government prove guilt beyond all possible doubt. The test is one of reasonable doubt, and reasonable doubt is doubt based upon reason and common sense, the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important of your own affairs.

You, the jury, will remember that a defendant is never to be convicted on mere suspicion or conjecture. The burden is always upon the prosecution to prove guilt beyond a

reasonable doubt. This burden never shifts
to a defendant. The law never imposes upon
a defendant in a criminal case the burden or
duty of calling any witnesses or producing any
evidence.

A reasonable doubt exists whenever, after careful and impartial consideration of all the ewidence in the case, the jurors do not feel convinced to a moral certainty that a defendant is guilty of the charge. So, if the jury views the evidence in the case as reasonably permitting either of two conclusions, one of innocence, the other of guilt, you, the jury, should, of course, adopt the conclusion of innocence.

I have said that the defendant may be proven guilty either by direct or circumstantial evidence. I have said that direct evidence is the testimony of one who asserts actual knowledge of the fact, such as an eyewitness. Also circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of a defendant. You, the jury, may make common sense inferences from the proven facts.

It is not necessary that all inferences drawn from the facts in evidence be consistent only with guilt and inconsistent with every reasonable hypothesis of innocence or that there must be no reasonable doubt as to each chain of proof. The test is one of reasonable doubt, and should be based upon all the evidence, the testimony of the witnesses, the documents offered into evidence and the reasonable inferences which can be drawn from the proven facts.

An inference is a deduction or conclusion which reason and common sense leads: the jury to draw from the facts which have been proved. You are to consider only the evidence in the case. But in your consideration of the evidence, you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw, from the facts which you find have been proved, such reasonable inferences as seem justified in the light of your own experience.

Your determination should be based not only on the evidence produced but also from the lack of evidence produced. Since the burden is upon the prosecution to prove every essential element

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of the crime charged a defendant has a right to rely upon the failure of the prosecution to establish such proof.

You as jurors are the sole judges of the credibility of the witnesses and the weight their testimony deserves, and it goes without saying that you should scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witnesses' intelligence, motive and state of mind, and his demeanor and manner while on the stand. Consider the witnesses' ability to observe the matters as to which he has testified, and whether he impresses you as having am accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner inwhich each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony

of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such credibility, if any, as you think it deserves.

Another test that you can use in determining the truthfulness or credibility of a witness is to use your own good common sense in addition to these essentials that I have given you. You can use your good common sense as you do in your every-day experience where you must make important decisions based upon what others tell you. When you decide to either accept or ignore the statements of others you use your common sense. Your good judgment will say to you

not appear to be truthful, that somehow or other you just do not believe what they have said. That is your ability to reason, your ability to determine the truthfulness of the person you are speaking with. Likevise, your common sense should be used to determine the weight to be given the testimony of a witness.

into the jury room, you do not leave it outside.

In addition to what I have said, use your common sense as a test in exercising your good judgment and in determining whether or not this defendant is guilty of the crimes charged. It is for you to determine whether the witnesses in this case have testified truthfully, whether or not they have an interest in the case, what that interest may be and how great it is and whether or not they have told you falsehoods. This is all for you to determine.

When a defendant takes the witness stand, which he has a perfect right to do, he is subjected to all the obligations of witnesses, and his testimony is to be treated like the testimony

be for you to say, remembering the substance of his testimony, the manner in which he gave it, his cross-examination, and everything else in the case, whether or not he told the truth. Then again, it is for you to remember and, you have a perfect right to do so, the very grave interest the defendant has in the case. As he places himself as a witness, he stands like any other witness.

In this case we had an additional witness, the chemist, known as an expert who testified as to the findings of the substance, cocaine, a controlled substance. His testimony bears only on the fact that the substance he said he found comes within the statute.

Every witness' testimony must be weighed as to its truthfulness. If you find any witness lied as to any material fact in the case — material fact as I said before is that fact that goes to the substance of the case — then the law gives you certain privileges. One of those privileges is that you have the right to disregard the entire testimony of that witness. If you find,

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however, that you can sift through that testimony and determine which of the testimony is

true and which was false, then the law allows
you to take the portions which were true and
weigh it and disregard those portions which
were false. That again is within your prerogative.

You are not obliged to accept testimony,
even though the testimony is uncontradicted and
the witness is not impeached. You may decide,
because of the witness' bearing and demeaner,
or because of the inherent improbability of his
testimony, or for other reasons sufficient to
you, that such testimony is not worthy of belief.

The Government is not required to prove
the essential elements of the offense as defined
in these instructions by any particular number
of witnesses. The testimony of a single witness
may be sufficient to convince you beyond a reasonable
doubt of the existence of an essential element of
the offense charged, if you believe beyond a reasonable doubt that the witness is telling the truth.

There is nothing peculiarly different in the way a jury should consider the evidence in a criminal case, from that in which all reasonable •

persons treat any question depending upon evidence presented to them. You are expected to use your good sense; consider the evidence in the case for only those purposes for which it has been submitted, and give it a reasonable and fair construction, in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If an accused be proved guilty beyond a reasonable doubt, say so. If not so proved guilty, say so.

Keep constantly in mind that it would be a violation of your sworn duty to base a verdict of guilty upon anything other than the evidence in the case; and remember as well that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

The punishment provided by law for the offense charged in the indictment is a matter

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exclusively within the province of the Court, and should never be considered by the jury in any way, in arriving at an impartial verdict as to the guilt or innocence of the accused.

Now, in this type of case, there must be a unanimous verdict, that means all twelve of you must agree, and it goes without saying, as I said in my pre-charge, that it becomes encumbent upon you to listen to one another and to argue out the points among yourselves in order to determine in good conscience whether your fellow jurors' argument is one commesurate with yours or whether at least you can, with good conscience, agree with him in reference to the evidence proffered before you during the trial. You have no right to stubbornly and idly sit by and say "I am not talking to anyone, I am not going to discuss it" because people with common sense and the ability to reason must communicate, they must communicate their thoughts. So, anything which appears in the record and about which one of you may not agree -- talk it out amongst yourselves and then if you cannot agree as to what is in the record, well, you can ask the Court to have that portion of the testimony read back to you.

You may do so by knocking on the door and giving a note in writing to the clerk who will then present it to the Court, and I will then bring you into the courtroom.

The foreman will preside over your deliberations and will be your spokesman here in court.

The form of your verdict in this case will be, Mr. Foreman, in announcing it: "We the jury find" -- since there is only one count -- "the defendant not guilty" or "We the jury find the defendant guilty."

That is the charge of the Court.

(Whereupon two deputy United States
Marshals were sworn by the Clerk of the Court
at 4:35 p.m.)

THE COURT: Now, the marshals have been sworn and alternates one and two, please step down. You can no longer go into the deliberating room with the jurors.

Do you have your coats in there?

ALTERNATE JUROR NUMBER ONE: Yes sir.

THE COURT: The marshal will get your coats for you. You will be excused. You don't

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have to come back any more and do not discuss the case with anyone even at this point.

> As you leave, talk to no one. (Recess taken)

(continued on next page)

(Reporter relieved by D. Simon)

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(The following occurred at 5:20 o'clock p.m. in the absence of the jury.)

MR. SCOTTI: The answer is no.

THE COURT: That is what I have to answer,

MR. SCOTTI: No, I am saying the answer is no.

THE COURT: No what?

MR. SCOTTI: It says: "Does entrapment have any bearing on this case --"

MR. MESSINA: That is not the whole thing.

MR. SCOTTI: It says: "In his opening statement the defense lawyer mentioned entrapment. Does entrapment have any bearing on this case?" The answer is no.

MR. MESSINA: Well, I do not think that abrupt an answer is appropriate.

THE COURT: The answer will be no. But I think the raising of a defense of entrapment does not necessarily mean that it would be submitted to the jury. The question is one to be determined by the Court as a matter of law as to whether such a charge should be made

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to the jury. The Court, after argument determined that it would not charge the jury as to the law of entrapment.

MR. SCOTTI: I'd like that, except can you please read it to me again, Judge.

THE COURT: You had better read it to him because possibly he can't read my writing.

MR. SCOTTI: The only suggestion I would make, your Honor, would be that the raising of the defense of entrapment by an attorney in his opening statement does not necessarily --I would add that.

THE COURT: That's the only thing. I agree with that, by an attorney in his opening statement raising a defense. Okay. The answer is no. And then I give them the reason. You can't very well say just no.

MR. MESSINA: Will that be marked?

THE COURT: The note. But my charge will but in the record.

MR. MESSINA: Oh, your charge will be in the record.

THE COURT: We are going to send them out for dinner now, anyway. That would be so we can

get them back when it is still light.

MR. SCOTTI: All right, you will say that.

THE CLERK: Court exhibit 2 and court exhibit 3, the jury notes.

(Documents referred to being jury notes were received and marked court exhibit.

2 and court exhibit 3 respectively.)

(The jury thereupon returned to the courtrorm at 5:35 o'clock p.m.)

THE COURT: All right, for the record, the jury through its foreman, I assume, has submitted a note to the court which reads as follows; and is marked court's exhibit 3:

"In his opening statement the defense lawyer mentioned entrapment. Does entrapment have any bearing on this case?"

The answer to that question is no.

And the reason being the raising of a defense of entrapment by an attorney in his opening statement does not necessarily mean that it will be submitted to the jury. The question is one to be determined by the Court as a matter of law as to whether such a charge should

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be made to the jury. The Court after argument determined that it would not charge the jury as to the law of entrapment.

Now, we are going to have you go out to dinner. Get your coats. That will be so I can get you back in a hurry. Get your coats and walk right out with the marshals.

(The jury thereupon retired from the courtroom at 5:35 o'clock p.m.)

MR. SCOTTI: I think maybe they would have come back rather quickly after that answer rather than sending them out to dinner.

THE COURT: No, I think they would have raised their hands if they wanted to deliberate any longer at this time. That is what they usually do.

THE CLERK: Shall I ask them?

THE COURT: Let it go. Let's give them a free meal.

MR. MESSING: Yes, they will feel better.
Why should we antagonize the jury.

(Dinner recess)

(continued on next page)

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(At 8:20 p.m. the following occurred in the absence of the jury)

THE CLERK: Jury note marked Government exhibit number 4.

We have a note from the jury.

"We would like to have the following testimony of Frank Licursi: Direct examination, cross examination and re-direct examination."

MR. SCOTTI: The entire thing.

THE COURT: What else is there to an eyamination?

Bring them in and I'll see if I can limit it.

(Jury entered jury box)

THE COURT: Now, I have received a note marked Government exhibit 4.

"We would like to hear the following testimony of Frank Licursi: Direct examination, cross examination and re-direct examination."

Are there any particular parts that you want to hear or do you want to hear the whole thing?

JUROR NUMBER ONE: I think they are interested in the meeting at the house.

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THE COURT: All right. Otherwise, it would take quite some time and these minutes have not been transcribed.

Now, the meeting at the house. Which house?

JUROR NUMBER ONE: The initial meeting when the agent was introduced.

THE COURT: On cross examination would that be the same thing — the meeting at the house?

JUROR NUMBER ONE: Yes.

THE COURT: And re-direct. Okay.

(Whereupon the record was read by the reporter)

JUROR NUMBER ONE: That's all we need, your Honor.

THE COURT: You have heard enough?

JUROR NUMBER ONE: Yes.

(Jury excused for further deliberations at 8:45 p.m.)

MR. SCOTTI: There's more, Judge.

THE COURT: They said that's all they wanted. They got up and walked out. They have a right to --

THE CLERK: Mr. Foreman and ladies and

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gentlemen of the jury, have you agreed upon a verdict?

JUROR NUMBER ONE: Yes.

THE CLERK: What is your verdict?

JUROR NUMBER ONE: We find the defendant guilty.

THE CLERK: Ladies and gentlemen of the jury, as the Court has received your verdict you say you find the defendant guilty and so say you all.

THE COURT: Do you wish the jury polled?

MR. MESSINA: Yes.

THE CLERK: Juror number one, you say
you find the defendant, Frank Licursi, guilty
as charged. Is that your verdict, juror number
one?

JUROR NUMBER ONE: Yes.

THE CLERK: Juror number two, is that your verdict?

JUPOR NUMBER TWO: Yes.

THE CLERK: Juror number three, is that your verdict?

JUROR NUMBER THREE: Yes.

THE CLERK: Juror number four, is that

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your verdict?

JUROR NUMBER FOUR: Yes.

THE CLERK: Juror number five, is that your verdict?

JUROR NUMBER FIVE: Yes.

THE CLERK: Juror number six, is that

your verdict?

JUROR NUMBER SIX: Yes.

THE CLERK: Juror number seven, is that

your verdict?

JUROR NUMBER SEVEN: Yes.

THE CLERK: Juror number eight, is that your verdict?

JUROR NUMBER EIGHT: Yes.

THE CLERK: Juror number nine, is that your verdict?

JUROR NUMBER NINE: Yes.

THE CLERK: Juror number ten, is that your verdict?

JUROR NUMBER TEN: Yes.

THE CLERK: Juror number eleven, is that your verdict?

JUROR NUMBER ELEVEN: Yes.

THE CLERK: Juror number twelve, is that

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your verdict?

JUROR NUMBER TWELVE: Yes.

THE COURT: The jury has been polled and found to be unanimous.

Now, you need not return. If anyone needs an excuse or a note to their employer --JUROR NUMBER FIVE: I do.

JUROR NUMBER TWELVE: I need one also, your Honor.

THE COURT: all right. Juror number five and juror number twelve.

You are excused now. You need not return. The jurors' term is ended as of tonight and I thank you for being in my courtroom.

Thank you for serving.

If you want to see my chambers wait there. I will be right in and you can come in with me. (Whereupon the july was discharged.)

THE COURT: Motions?

MR. MESSINA: At this time your Honor, I move that the verdict of the jury be set aside as against the weight of the evidence and that the Court direct a verdict of acquittal.

THE COURT: That motion is denied.

It is a question of fact for the jury.

Now, what is his bail? Personal recognizance?

MR. SCOTTI: Five thousand dollars personal recognizance bond and the Government does not object to continuing the bond.

THE COURT: The bail is to be continued and you will report to probation to morrow morning and sentence will be adjourned without date at which time you will be able to indicate whether you wish to appeal or not.

TRANK LICUMST, JE. JUDGMENT AND PROBATION/COMMITMEN In the presence of the attorney for the government the defendant appeared in person on this date However the court advised defendant of right to counsel and asked whether defendant J WITHOUT COUNSEL COUNSEL have counsel appointed by the sourt and the defendant thereupon waived assistance of countries. Raymond Messina, Esq. WITH COUNSEL (Name of counsel) NOT GUILT J NOLO CONTENDERE, J GUILTY, and the court being satisfied that PLEA there is a factual basis for the plea, → NOT GUILTY. Defendant is discharged There being a finding/verdict of TXX GUILTY. Defendant has been convicted as charged of the offense(s) of violating T-21. U.S and T-18, U.S.C. Sec. 2, in that en er about May 6, 1974 FINDING & knowingly andintentionally mided and abetted by abbedutid kn JUDGMENT and intentionally distribute approximately 89 grams of cocaine loride, a Schedule II nercotic drug controlled substance The court asked whether defendant had anything to say why judgment should not be pronounced. Because no suffic was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted as hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a bagin 3 years. Execution of sentence is suspended and the defendant is placed on probation for a period of 3 years pursuant to T-18, U.S.C.Sec. 5010(a) and to pay a fine of \$500 pursuant to T-18, U.S.C.Sec. 420 fine to be paid within one year. FOTFISCE - 08 PROBATION DRDER MCIAL MOTABOR In addition to the special conditions of probation imposed above, it is hereby ordered that the general condition reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the any time during the probation period or within a maximum probation period of five years permitted by law, reprobation for a violation occurring during the probation period. JAKBITICE DADITIONS :DF ROUTAROS The court orders commitment to the custody of the Attorney General and recommends, It is ordered that the Clark deliver a pertified copy of this judgment, and commitment to the U.S. Mar-

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DANA F. DYNES, EUGENE CAUFIELD, DAVID CORR and FRANK LICURSI, Jr.

Defendants

## DEFENDANT LICURSI'S REQUEST TO CHARGE

1. In order to aid and abet another to commit a crime it is necessary that the accused willfully associate himself in some way with the criminal venture, and willfully participate in it as he would in something he wishes to bring about; that is to say that he willfully seek by some act or omission of his to make the criminal venture succeed.

An act or omission is "wilffully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say with bad purpose either to disobey or to disregard the law.

You of course may not find any defendant quilty unless you find beyond reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons, and that the defendant, LICURSI, participated in its commission.

2. The burden of establishing the guilt of the defendant IICURSI beyond a reasonable doubt rests upon the Government throughout the entire case, and the defendant is not required to prove his innocence.

- and carries with it no prospertion of guilt.
- the opinions of the other jurors, he or she must decide the case upon his or her own opinion of the evidence, and upon his or her own judgment and conscience, and not that of his or her fellow jurors, even against a large majority of his or her fellow jurors.

  5. If the evidence merely creates the sus, icion of the defendant licural significant that he is possibly or probably guilty, then the minds of the jury are in a state of reasonable doubt, and the defendant LICURSI is entitled to the benefit of such reasonable doubt and the jury must find the defendant LICURSI not guilty.
- favor which can be researchly drawn from the evidence, and where two intellects may be drawn from the same facts, one consistent with guilt the one consistent with guilt the one consistent with innocence, the defendant LIGUEST is emittled to the inference which is consistent with his limitance.
- The Source desires to be retained to the fury that upon the trial of the second less than the second as charged in the second to be seen as charged in the second to be seen as charged in the second to be seen as a blanch or lack of evidence, such don't be seen as a second to be second, since seem to be seen as a second to be second to be seen as a second to be second to be seen as a second to be second to

that testimony.

- 9. The presumption of the defendant's innocece is not an idle phrase to be taken lightly by the jury; but is must be borne in mind by the jury that it is an important right belonging to every person accused of crime. Such presumption of innocence continues throughout the trial and the jury's deliberations, until it is overcome by evidence, and the evidence only, to the exclusion of all reasonable doubt.
- 10. The jury must consider the testimony of all witnesses called by the Government, not as it stood upon direct examination but as it stood modified and qualified upon cross examination, and the jury in the event of differing versions by a Government witness must accept that most favorable to the defendant.
- 11. The defendant LICURSI asserts that he was a victim of entrapment as to the crime charged in the indictment.

Where a person has no previous intent or purpose to violate the law, but is induced or persuaded by law enforcement officers or their agents to commit a crime, he is a victim of entrapment and the law as a matter of policy forbids his conviction in such a case.

On the other hand, where a person already has the readiness and willingness to break the law, the fact that Government agents provide what appears to be a favorable opportunity is not entrapment. For example, when the Government suspects that a person is engaged in the illicit sale of narcotics, it is not entrapment for a Government agent to pretend to be someone else and to offer, either directly or through an informer or other decoy, to purchase narcotics from such suspected person.

to shee the Aury should find beyond a reasonable doubt

from the evidence in the case that, before anything at all occurred respecting the alleged offense involved in this case, the defendant was ready and willing to commit crimes such as charged in the indictment, whenever opportunity was afforded and that Government officers or their agents did no more than offer the opportunity, then the jury should find that the defendant is not a victim of entrapment.

On the other hand, if the evidence in the case should leave
you with a reasonable doubt whether the defendant LICURSI
had the previous intent or purpose to commit any offence of the
character here charged, and did so only because he was induced
or persuaded by some officer or agent of the Government, then it
your duty to acquit him.

If the evidence in the case should leave you with a reasonable doubt whether the defendant LICURSI had the previous intent or purpose to commit an offense of the character charged, apart from the inducement or persuasion of some officer or agent of the tovernment, then it is your duty to find him not guilty.

where the defendant LICURSI's testimony clearly shows
entrapment and the Government does not go forward with
contradictory testimony then the defendant is entitled to acquittal.

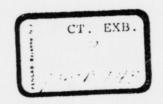
Respectfully submitted

RAYMOND J. MESSINA Attorney for defendant LICURSI Can we get a copy is the Durchetment and a copy is the way.

U.S DISTRICT COURT ED. NY
APR 23 1975

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LAWYER MENTIONED ENTERINE DOES
ENTRAPMENT HAVE AND BEAR OF DOTTING CASE?

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CT. EXB.

WE WOULD LIKE TO HEAR THE FOLLOWING
TESTIMONY OF FRANK LICORSI:

DIPECT EXAMINATION

CROSS EXAMINATION

RE-DIRECT EXAMINATION

U. S. DISTRICT COURT ED NY

APR 23 1975

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WE HAVE REACHED A

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EASTERN DISTRICT OF NEW YORK

P GARAMONE